

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RONALD F. GIBSON : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, et al. : NO. 97-1553

MEMORANDUM AND ORDER

HUTTON, J.

July 15, 1997

Presently before the Court is the Plaintiff's Motion for Appointment of Counsel (Docket No. 5).

I. BACKGROUND

The plaintiff, a pro se death-row prisoner at State Correctional Institution Greene, alleges that in 1987 he was falsely arrested for possession of cocaine by defendant Police Officers John Baird and Steven Brown. (Compl. at 3.) The plaintiff maintains that this arrest ultimately lead to a conviction for drug possession, for which he received three years probation. (Id. at 3-3a.) The plaintiff alleges that while he was on probation, defendants Baird and Brown regularly robbed, intimidated, and physically beat him. (Id. at 3a.) He also claims that the defendant police officers threatened to falsely testify that he violated his probation by possessing drugs. (Id.)

On November 1, 1989, the plaintiff filed a formal complaint with the Internal Affairs Department ("IAD") of the Philadelphia Police Department, in which he detailed "continual harassment, beatings and threats of probation violation and

imprisonment by Defendant Baird." (Id.) He also described to the IAD how defendants Baird, Brown and Degovanni allegedly planted evidence which lead to his 1987 arrest, and allegedly regularly beat and harassed him. (Id.) After filing his complaint with the IAD, the plaintiff asserts that on December 8, 1989, Defendants Baird, Brown, and Thomas Degovanni took him to Fairmount Park, handcuffed him to a tree, beat him, urinated on him, and played "Russian Roulette" with him, in an effort to force him into "snitching" on a reputed drug dealer. (Id.)

To remedy these alleged wrongs, the plaintiff initiated an in forma pauperis lawsuit in this Court, alleging that the defendants violated his civil rights pursuant to 42 U.S.C. § 1983. The Court, however, determined that the plaintiff failed to comply with the requirements of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996), denied the plaintiff's application, and directed the Clerk of the Court to close the civil action.¹ Gibson v. City of Philadelphia, No. CIV.A.97-1553 (E.D. Pa. Mar. 5, 1997) (order). After receiving this order, the plaintiff reinstated the action by paying the entire \$150 filing fee. Shortly thereafter, the plaintiff filed the instant motion.

¹/ The Prison Litigation Reform Act of 1995 amends 28 U.S.C. § 1915 by requiring prisoners bringing civil actions in forma pauperis to pay the full \$150 filing fee. Pub. L. No. 104-134 § 804(a)(3); Magarity v. Michalski, No. CIV.A.97-2612, 1997 WL 220288, at *1 (E.D. Pa. Apr. 24, 1997).

II. DISCUSSION

A. Standard for Appointment of Counsel

Congress has provided that a district court "may request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1) (1996). Because indigent civil litigants do not have a statutory right to appointed counsel, the United States Court of Appeals for the Third Circuit has set forth a two-tiered analysis to guide the courts in deciding whether to appoint counsel. Tabron v. Grace, 6 F.3d 147, 155-58 (3d Cir. 1993), cert. denied, 510 U.S. 1196 (1994).

Under this analysis, a district court must first determine whether the case has arguable legal and factual merit. Id. at 155. If the case has some legal and factual basis, then a court must consider whether: (1) the plaintiff is able to present her case;² (2) the degree of difficulty or complexity of the legal issues; (3) the "degree to which factual investigation will be required and the ability of the indigent plaintiff to pursue such investigation," including whether discovery will be extensive; and (4) the extent to which the case will turn on credibility determinations and experts will be needed. Id. at 155-56. A court must also consider factors militating against appointing counsel, such as the lack of funding to pay appointed counsel, the limited supply of competent lawyers willing to undertake such representation without compensation, and the value of lawyers'

²/ A court will look at factors such as the plaintiff's "education, work experience, litigation experience and literacy." Jones v. Hinton, 153 F.R.D. 570, 571 (E.D. Pa. 1994).

time.\³ Id. at 157. If after completing this analysis, a court is convinced that the indigent litigant is deserving of counsel, then the court may appoint counsel for that litigant. Id. at 157-58.

B. Analysis of Plaintiff's Section 1983 Civil Rights Claims

42 U.S.C. § 1983 was originally enacted as part of the Civil Rights Act of 1871. Wilson v. Garcia, 471 U.S. 261, 276 (1985). The statute was passed as a response to "the campaign of violence and deception in the South, fomented by the Ku Klux Klan, which was denying decent citizens their civil and political rights." Id. In addition to halting the persecution of decent citizens by the Ku Klux Klan,

[i]t is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced and claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies.

Monroe v. Pape, 365 U.S. 167, 180 (1961), overruled in part by, Monell v. Department of Soc. Servs., 436 U.S. 658, (1978). As such, a plaintiff may bring a Section 1983 action if he alleges that a person acting under color of state law deprived him of rights, privileges, or immunities secured by the Constitution or

^{3/} "Volunteer lawyer time is a precious commodity Because this resource is available in only limited quantity, every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause. We cannot afford that waste." Tabron, 6 F.3d at 157 (quoting Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989)).

laws of the United States.\⁴ 42 U.S.C. § 1983 (Supp. 1997); West v. Atkins, 487 U.S. 42, 48-49 (1988); Groman v. Township of Manalpan, 47 F.3d 628, 633 (3d Cir. 1995). If, however, a plaintiff does not allege that a defendant deprived him of his legal rights, he may not seek relief under this statute.

He also may not seek relief if the statute of limitations for the civil rights action has run. Wilson v. Garcia, 471 U.S. 260, 276 (1985); Knoll v. Springfield Township Sch. Dist., 763 F.2d 584, 585 (3d Cir. 1985). The United States Supreme Court has held that civil rights claims brought under Section 1983 are best characterized as personal injury actions for statute of limitations purposes. Wilson, 471 U.S. at 276. Therefore, a court analyzing a civil rights claim must first determine whether the forum state's statute of limitations for personal injury actions has run. Id. In Pennsylvania, the statute of limitations for personal injuries is two years, and thus the statute of limitations for a civil

⁴/ Section 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (Supp. 1997).

rights cause of action under Section 1983 is also two years. 42 Pa. Cons. Stat. Ann. § 5524 (1981 & Supp. 1997); Knoll, 763 F.2d at 585 (citations omitted).

In the instant case, the plaintiff alleges that the defendants violated his civil rights through the unconstitutional misuse of force, denial of due process, abuse of process, and by falsely arresting and imprisoning him. To redress these alleged wrongs, the plaintiff filed his complaint and asserted his claims almost eight years after the defendants alleged violated his civil rights:

The plaintiff did not [s]ue until the defendants admitted in other cases and in a court of law that they participated in activities similar to those complained of her[e]in. Also upon learning of plaintiff's co-defendant[']s case being reversed by the [District Attorney]. It was not until these events that the plaintiff felt the truth could be heard. His Internal Affairs complaint was rejected base[d] upon the Defendant[s'] assertions of innocence.

(Compl. at 3a.) The defendant, City of Philadelphia, however, asserts the affirmative defense that the plaintiff's claims are barred by the statute of limitations. (Ans. at 1.)

After reviewing the pleadings, this Court finds that the plaintiff's complaint was filed more than two years after his cause of action arose. Thus, regardless of his reasons for delaying the initiation of his suit, his civil rights claims are time barred. Therefore, because the plaintiff's case lacks legal merit, he cannot satisfy the initial tier of the Third Circuit's analysis.

Tabron, 6 F.3d at 153.\⁵ Consequently, this Court must deny his motion for appointment of counsel. Furthermore, because plaintiff's claims are barred by the statute of limitations, this Court orders the plaintiff to show cause within twenty (20) days why his complaint should not be dismissed.

An appropriate Order follows.

^{5/} Because the plaintiff's complaint fails to satisfy the threshold factor for determining whether to appoint counsel, this Court will not address the remaining factors.

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O R D E R

AND NOW, this 15th day of July, 1997, upon consideration of Plaintiff's Motion for Appointment of Counsel (Docket No. 5), IT IS HEREBY ORDERED that the Motion is **DENIED**.

IT IS FURTHER ORDERED that the Plaintiff show cause within twenty (20) days of this Order why his Complaint should not be dismissed.

BY THE COURT:

HERBERT J. HUTTON, J.