

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.

August 18, 1997

Presently before the Court is the Plaintiff's Motion for Leave to File His First Amended Complaint (Docket No. 14).

**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.<sup>1</sup> 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. The plaintiff then filed a motion asking the Court to appoint counsel for him. The Court, however, denied

---

<sup>1</sup>/ 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).

this motion, and ordered the plaintiff show cause why his complaint should not be dismissed. Gibson v. City of Phila., No. CIV.A.97-1553, 1997 WL 407970, at \*3-4 (E.D. Pa. Jul. 16, 1997) (Hutton, J.). By way of answer, the plaintiff filed a motion for reconsideration<sup>2</sup> and the instant motion, in which he seeks to amend his complaint.

## II. DISCUSSION

### A. Standards For Leave To Amend

#### 1. Federal Rule of Civil Procedure 15(a)

Federal Rule of Civil Procedure 15(a) allows a plaintiff to amend his complaint after it has already been filed:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading whichever period may be the longer, unless the court otherwise orders.

Fed. R. Civ. P. 15(a) (emphasis added). To explore the contours of this rule and detail when a plaintiff may amend his complaint, the United States Supreme Court has explained that:

---

<sup>2/</sup> On this day, in a separate order, this Court denied the plaintiff's motion for reconsideration of its July 15, 1997 order.

Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded. . . . If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--that leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Foman v. Davis, 371 U.S. 178, 182 (1962). The United States Court of Appeals for the Third Circuit has interpreted these factors "to mean that `prejudice to the non-moving party is the touchstone for the denial of an amendment.' . . . In the absence of substantial or undue prejudice, denial instead must be based on bad faith or dilatory motives, truly undue or unexplained delay, repeated failures to cure the deficiency by amendments previously allowed, or futility of amendment." Lorenz v. CSX Corp., 1 F.3d 1406, 1413-14 (3d Cir. 1993). "Amendment of the complaint is futile if the amendment will not cure the deficiency in the original complaint or if the amended complaint cannot withstand a renewed motion to dismiss." Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988). Therefore, the Court may refuse to allow

an amendment that fails to state a cause of action because it would not survive a motion to dismiss. Adams, 739 F.2d at 864.

**B. Analysis of the Defendant's Motion**

In this case, the plaintiff moves the Court to allow him to amend his complaint to incorporate recently discovered information and to plead with greater specificity. (Pl.'s Mot., at ¶¶ 1-2.) In addition, he seeks to add a conspiracy claim pursuant to 28 U.S.C. § 1985(3). (Proposed Am. Compl., at 2.)

These proposed amendments do not address the fact that the plaintiff filed his complaint more than two years after his cause of action arose. This Court has already held that the because the plaintiff's Section 1983 claims are characterized as personal injury actions, they are subject to Pennsylvania's two-year statute of limitations. Gibson v. City of Phila., No. CIV.A.97-1553, 1997 WL 407970, at \*2-3. Furthermore, the United States Court of Appeals for the Third Circuit has held that Section 1985 actions are also subject Pennsylvania's two-year statute of limitations:

The Supreme Court has yet to make a definitive statement concerning the most analogous state limitations period for 42 U.S.C. § 1985 claims concerning conspiracies to deny constitutional rights. We, however, spoke implicitly on the issue when, in Pratt v. Thornburgh, 807 F.2d 355 (3d Cir. 1986), cert. denied, 484 U.S. 839 (1987), we affirmed a district court decision holding that, after Goodman v. Lukens Steel, 482 U.S. 656 [(1987)], § 1985 actions should also be controlled by the forum state's limitations period for personal injury claims. Pratt v. Thornburgh, 807 F.2d at 357.

Callwood v. Questel, 883 F.2d 272, 274 (3d Cir. 1989). Therefore, because the plaintiff did not initiate his suit until 1997, almost eight years after the alleged constitutional violations occurred, the plaintiff's civil rights claims are time barred. Accordingly, this Court concludes that allowing the plaintiff to amend his complaint is futile, because his case lacks legal merit.

An appropriate Order follows.

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

O R D E R

AND NOW, this 18th day of August, 1997, upon consideration of the Plaintiff's Motion for Leave to File His First Amended Complaint (Docket No. 14), IT IS HEREBY ORDERED that the Motion is **DENIED**.

BY THE COURT:

---

HERBERT J. HUTTON, J.