

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

|                       |   |              |
|-----------------------|---|--------------|
| RICHARD KING, JR.,    | : | CIVIL ACTION |
| Plaintiff,            | : | NO. 99-6303  |
|                       | : | NO. 01-3642  |
| v.                    | : |              |
|                       | : |              |
| CITY OF PHILADELPHIA, | : |              |
| Defendant             | : |              |

**MEMORANDUM**

Giles, C.J.

January \_\_\_2002

**I. Introduction**

Richard King (“King”) filed a pro se complaint under 42 U.S.C. § 1983 with this court on July 19, 2001, alleging violations of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution. This second complaint (“Complaint II”) was consolidated with an earlier complaint (“Complaint I”), filed December 10, 1999. Complaint I alleges claims based on violations of Title VII of the Civil Rights Act of 1964 and the First, Fifth, and Fourteenth Amendments to the United States Constitution under 42 U.S.C. § 1983.

On August 17, 2001, defendant City of Philadelphia filed a motion to dismiss the false arrest and malicious prosecution claims contained in Complaint II on the basis that (1) the false arrest claim is time-barred; (2) the complaint fails to allege a claim for malicious prosecution; and (3) the complaint fails to state a cause of action under 42 U.S.C. § 1983. Although the court has granted countless extensions in order for plaintiff to obtain counsel to answer the motion, the motion remains before this court unanswered as of the date of this opinion. For the reasons that follow, defendant’s motion is granted.

## II. Factual Background

The facts as alleged in the complaints are as follows:

Plaintiff was arrested on or about April 2, 1998 and accused of making false reports to law enforcement officers and obstructing justice. (Compl. II ¶ 1.) During the police department's investigation of the criminal charges filed against plaintiff, an individual, William Tarrance was arrested, placed into a holding cell at the 35th Police District, and interrogated about a burglary. (Id.) During the interrogation of Tarrance, one of the Philadelphia police officers told Tarrance that he was going "to see that Richard King rots in jail." (Id.) Tarrance was told that he would not be released from custody until he signed a statement which he subsequently did. (Id.)

On or about July 20, 1999, all charges against plaintiff in the matter were dismissed due to lack of evidence. (Id.)

## III. Discussion

### A. *Standard for a Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure*

In considering a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court accepts as true all well-pled factual allegations contained in the complaint and draws all reasonable inferences in favor of the non-movant. Only if a court concludes that a plaintiff would not be entitled to relief under any set of facts consistent with their allegations, can a court grant a defendant's motion to dismiss pursuant to Rule 12(b)(6). Jordan v. Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom. Nami v. Frayer, 82 F.3d 63, 65 (3d Cir. 1996). However, the court is not required to accept allegations

that amount to “mere legal conclusions” or “bald assertions without any factual support.” Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

Plaintiff has filed pro se Complaint II, so this court will follow the instructions of the third circuit and construe the pro se pleadings liberally. Zilich v. Lucht, 981 F.2d 694, 694 (3d Cir.1992) ("When ... plaintiff is a pro se litigant, we have a special obligation to construe his complaint liberally."). Since plaintiff's Complaint I was prepared by counsel and does allege some facts to support a false arrest and malicious prosecution claim, this court will consider these factual allegations as well as the facts alleged in Complaint II in deciding this motion. However, even though plaintiff alleged facts about wrongful arrest in Complaint I, he did so as evidence of retaliation for his Title VII claim. Plaintiff did not allege claims for false arrest or wrongful prosecution in Complaint I and for statute of limitations purposes, these claims are considered as filed on July 19, 2001.

*1. False Arrest Claim Barred by the Applicable Statute of Limitations*

Claims of constitutional violations pursuant to 42 U.S.C. § 1983 are governed by the state statute of limitations for personal injury claims. Pratt v. Thornburgh, 807 F.2d 355, 357 (3d Cir. 1986); Wilson v. Garcia, 471 U.S. 261 (1985). Under Pennsylvania law, a plaintiff must bring a cause of action within two-years of the injury giving rise to the alleged violation. 42 PA. CONS. STAT. ANN. § 5524. Claims of false arrest accrue on the date of arrest. Montgomery v. DeSimone, 159 F.3d 120, 122 (3d Cir. 1998). According to plaintiff's complaint, he was arrested on April 2, 1998. (Compl. II ¶ 1.) He first brought a cause of action for false arrest on

July 19, 2001, well after the two-year statute of limitations had expired.<sup>1</sup>

2. *Failure to State a Claim for Malicious Prosecution*

While plaintiff states that his complaint “contains allegations of false arrest and malicious prosecution,” the complaint does not contain any allegations to support a claim for malicious prosecution. Torres v. McLaughlin, No. CIV.A.96-5865, 1996 WL 680274 (E.D. Pa. Nov. 21, 1996) discusses in depth how to evaluate whether a complaint states a cause of action for false arrest or malicious prosecution. Id. at \*3. Allegations that a warrantless arrest was not supported by probable cause advance a claim of false arrest at common law while allegations seeking damages for an arrest made pursuant to an arrest warrant that was not supported by probable cause are analogous to the common law tort of malicious prosecution. Id., at \*4. Plaintiff’s malicious prosecution claim constitutes a bald assertion without any factual support as he fails to allege that he was even arrested pursuant to an arrest warrant, much less an arrest warrant not supported by probable cause. Reading the factual allegations of Complaint I and Complaint II together, plaintiff, at most, alleges that an individual police officer arrested him without probable cause. He never mentions whether he was held in jail. In addition, the complaint fails to note whether the same officer who arrested him was the officer who remarked that he was going “to see that Richard King rots in jail.” (Compl. II. ¶ 1.)

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<sup>1</sup> Plaintiff had notice before the statute of limitations expired that he did not have a false arrest claim properly before this court. Plaintiff moved to amend his complaint to include a false arrest claim on January 15, 2001. Defendant orally opposed the amendment of the initial complaint at a settlement conference on January 19, 2001. At this settlement conference it was represented to the judge that the parties had settled the Title VII claim without prejudice to plaintiff’s right to bring another complaint alleging the false arrest and malicious prosecution claims as long as these claims were not time-barred. Thus, this court denied the motion to amend the existing complaint on January 23, 2001.

3. *Failure to State a Claim Under 42 U.S.C. § 1983*

Even if this court were to find that the false arrest claim was not barred by the statute of limitations, plaintiff has failed to state a cognizable § 1983 claim because he has not alleged a basis for liability on the part of the city. A local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. The municipality is responsible as an entity only when it is the execution of a government's policy or custom that inflicts the injury. Monell v. Dep't. of Soc. Servs., 436 U.S. 658, 694 (1978). A municipality cannot be held liable under § 1983 on a respondeat superior theory of liability. Id. at 691. Plaintiff fails to allege that his alleged wrongful arrest or malicious prosecution resulted from a policy or custom of the defendant City of Philadelphia.

**IV. Conclusion**

For the above reasons, plaintiff's false arrest and malicious prosecution claims are dismissed with prejudice. An appropriate order follows.



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