

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

**RODNEY ASH,  
Plaintiff,**

vs.

**PHILADELPHIA PRISON SYSTEM, ET AL.  
Defendants.**

**CIVIL ACTION**

**NO. 04-0556**

**MEMORANDUM AND ORDER**

**Tucker, J.**

**December 20, 2004**

Presently before this Court are Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) by Defendants Thomas Costello, the City of Philadelphia and the Court of Common Pleas (Docs. 7, 9)<sup>1</sup> and Plaintiff Rodney Ash's briefs in opposition thereto (Docs. 13, 14,15). For the reasons stated below, Defendants' Motions to dismiss are both granted.

**BACKGROUND**

On November 1, 2000, Plaintiff was arrested by Philadelphia police officers. Plaintiff was taken to the Curran Fromhold Correctional Facility where he was allegedly assaulted by four other inmates in the holding cell. On that same date, Plaintiff was taken to the mental health

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<sup>1</sup> This Court notes that these motions are responsive to the February 23, 2004 Amended Complaint. Since the filing of these motions and the responses thereto, this Court granted Plaintiff's request for leave to file a second amended complaint. In granting the request, this Court considered Docs. 3, 10, 12. The second amended complaint of March 12, 2004 is substantially similar to the February 23, 2004 amended complaint. The only difference between the two amended complaints is that, Plaintiff identifies Prison Health Services, Inc. as an additional defendant. Plaintiff also acknowledges that there are no changes to the material facts.

office of the Correctional Facility for evaluation and later transferred to the Psychiatric Unit. Plaintiff was classified as schizophrenic. Plaintiff maintains that the diagnosis was erroneous and that he does not have a history of mental illness.

On November 2, 2000, Plaintiff claims various medical personnel came into his cell to administer oral psychiatric medications. At that time, Plaintiff refused to take any medications. Upon his refusal, Plaintiff was sprayed with pepper spray and restrained. Plaintiff was forcibly intravenously medicated and sedated. Plaintiff was later deemed incompetent for all court proceedings. Approximately two weeks later, Plaintiff was removed from the Psychiatric Unit and placed in the general prison population at the Curran Fromhold Correctional Facility. At that time, Plaintiff signed medical refusal forms. Plaintiff alleges that medical staff members told him that his refusal to take medication would cause him to be continually deemed incompetent for court proceedings. Plaintiff claims he was given numerous and varying psychiatric medications three times daily over a one year period.

In November 2001, after being examined by another physician, it was determined that Plaintiff did not require medication. Evaluations in July, November, and December 2002, confirmed the medical assessment. Plaintiff objects to the Court of Common Pleas of Philadelphia County stipulating that Plaintiff could only bail out to a mental institution. This stipulation was made at a hearing that the Plaintiff did not attend.

On February 9, 2004, Plaintiff filed this § 1983 action alleging due process violations under the Fourteenth Amendment. Plaintiff subsequently amended the Complaint on February 23, 2004 and March 12, 2004.

## **LEGAL STANDARD**

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) should be granted only if the court finds that the plaintiff cannot prove any set of facts which would entitle him to relief.” Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The question is not whether the plaintiffs will ultimately prevail, but whether they are entitled to offer evidence to support their claims. Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). The Court must determine whether, under any reasonable reading of the pleadings, the plaintiffs may be entitled to relief. Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993). Where the plaintiff is a *pro se* litigant, the court has an obligation to construe the complaint liberally. This more liberal standard of construction means that a *pro se* complaint may be dismissed for failure to state a claim only if it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” See Haines v. Kerner, 404 U.S. 519, 520-521(1972). The complaint will be deemed to allege sufficient facts if it is adequate to “put the proper defendants on notice of the essential elements of plaintiffs' cause of action.” District Council 47, AFSCME v. Bradley, 795 F.2d 310, 313 (3d Cir.1986). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

## **DISCUSSION**

### **A. Defendants Thomas Costello and City of Philadelphia’s Motion to Dismiss**

Defendants Thomas Costello (“Costello”) and the City of Philadelphia (the “City”) move this Court for dismissal of this action on four grounds: (1) failure to state a claim against the Defendants pursuant to FRCP 12(b)(6); (2) claims are barred by statute of limitations;

(3) Defendant Costello is entitled to qualified immunity; and (4) Philadelphia Prison System is not an entity subject to suit pursuant to 53 P.S. § 16257.

1. *Failure to State a Claim*

Defendants contend that apart from naming the Defendants in the caption, Plaintiff only mentions Defendants one other time in the amended complaint. Plaintiff, in response, details why and in what legal capacity the Defendants are liable for the alleged constitutional violations.

Here, the Plaintiff has pleaded facts which may entitle him to relief, whether or not Plaintiff will prevail is not for this Court to determine at this stage. Plaintiff alleges incidents of excessive force and medical misdiagnosis and mistreatment while in custody. Plaintiff further alleges that he was denied due process when his grievances were ignored by prison officials, specifically the warden. Defendants Costello and the City baldly assert that Plaintiff has failed to state a claim -- hinging their argument on the fact that they are mentioned only once in the amended complaint. Defendants have provided neither supportive legal authority nor a persuasive rationale in its effort to have this court dismiss this action pursuant to Rule 12(b)(6). Moreover, this Court is obligated to construe *pro se* litigants complaints liberally. The facts are sufficiently pled to put the Defendants on notice of the cause of action against them. In Plaintiff's amended complaint, he specifically identifies Costello as the warden during the time of his incarceration, and identifies the City as the operator of the prison system.

Therefore, this Court will not dismiss the amended complaint for failure to state a claim for which relief may be granted. However, Defendants statute of limitations claim does have

merit.

2. *Statute of Limitations*

Defendants argue that Plaintiff's action is time barred because it is based on events that occurred in November 2000. Plaintiff contends that the statute of limitations should be tolled due to his classification as mentally incompetent. Plaintiff further contends that the medication administered by the prison medical practitioners rendered him "zombie like" for more than a year.

For statute of limitation purposes, § 1983 claims are characterized as personal injury claims. Courts apply the state statute of limitations for personal injury claims in order to determine the statute of limitations period. See Owens v. Okure, 488 U.S. 235 (1989). In Pennsylvania, personal injury claims are subjected to a two-year statute of limitations period. See McDowell v. Delaware State Police, 88 F.3d 188, 190 (3d Cir. 1966). The statute of limitations begins to run from the time the cause of action accrued, which is interpreted to mean when the first significant event necessary to make the claim suable occurs. Ross v. Johns-Manville Corp., 766 F.2d 823, 826 (3d Cir. 1985). Pennsylvania's two-year period is not tolled for mental incompetence. Walker v. Mummert, 146 A.2d 289 (Pa. 1958).

In the present case, Plaintiff filed his original complaint on February 9, 2004, amended complaint on February 23, 2004, and second amended complaint on March 22, 2004. Plaintiff brings this action based on events that happened between November 2000 and November 2001. The excessive force claim accrued on November 1, 2000, when the Plaintiff was assaulted in his holding cell and later forcibly medicated. Resultingly, that claim expired on November 1, 2002. Plaintiff contends he was unable to bring the claim because of medicinal sedation, a mental

incompetence diagnosis and lack of access to courts. However, neither mental incompetence nor lack of access to courts<sup>2</sup> is a recognized basis for preserving Plaintiff's claim under Pennsylvania's tolling statute.

Plaintiff urges this court to rely on Lake v. Arnold to toll the statute of limitations. In that case, a mentally retarded woman was involuntarily sterilized by her doctors at the request of her guardians. The Court reasoned that, given the extraordinary situation, Pennsylvania's statute of limitations was at odds with the federal policy underlying § 1983 claims. Specifically, the Court stated, "when the state tolling rules contradict federal law or policy, in certain limited circumstances we can turn to federal tolling doctrine." 232 F.3d 360, 370 (2000). Federal courts may toll statutes of limitations for federal laws where the plaintiff "in some extraordinary way has been prevented from asserting his or her rights." Id. (quoting Robinson v. Dalton, 107 F.3d 1018, 1022 (3d Cir. 1997)). Equitable tolling is appropriate in three scenarios, where: (1) defendant actively misleads a plaintiff with respect to a cause of action; (2) the plaintiff has been prevented from asserting the claim as a result of other extraordinary circumstances; (3) the plaintiff asserts the claims in a timely manner but has done so in the wrong forum. See Oshiver v. Levin, Fishbein, Sedran, & Berman, 38 F.3d 1380, 1387 (3d Cir. 1994).

Here, the only scenario that may be applicable is the second one - where plaintiff has been prevented from asserting the claims as a result of other extraordinary circumstances. This Court does not consider *this situation* an *extraordinary* circumstance. Plaintiff was committed to the

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<sup>2</sup> It should be noted that Plaintiff claims he was denied access to any court because he was not allowed to attend court proceedings. In making his argument, Plaintiff erroneously relies on Lewis v. Casey, 518 U.S. 343 (1996). That case concerned the denial of access to courts when the prison did not provide adequate access to a prison law libraries and legal assistance.

psychiatric unit for **approximately two weeks** and then released into the general prison population. After November 2001, Plaintiff did not receive any sedating medication. **Plaintiff had ample opportunity after the cessation of his medical treatment to bring suit. Plaintiff can not, now, three years after the fact, bring this action.**

Therefore, Plaintiff's claims are time barred. This Court will not reach the issues of immunity and entity liability. Consequently, the motion to dismiss is granted based on the statute of limitations.

**B. Defendant Court of Common Pleas of Philadelphia's Motion to Dismiss**

Defendant moves this Court to dismiss this action against the Court of Common Pleas of Philadelphia County because the Court of Common Pleas is a judicial branch of the Pennsylvania government and thus, not a "person" under 42 U.S.C. §1983. Plaintiff argues that the Court of Common Pleas is a local government unit and should be subject to liability.

Section 1983 provides a cause of action against "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State" deprives any citizen of federal constitutional or statutory rights. 42 U.S.C. § 1983.

Defendant properly asserts that courts in this Circuit have found that judicial components of the Pennsylvania government are not "persons" as required by § 1983. See Callahan v. City of Philadelphia, 207 F.3d 668, 674 (3d Cir. 2000)(citing Pokrandt v. Shields, 773 F.Supp. 758 (E.D. Pa. 1991); Mattas v. Supreme Court of Pennsylvania, 576 F.Supp. 1178 (W.D. Pa. 1983); Delgado v. McTighe, 442 F.Supp. 725 (E.D.Pa.1977); County of Lancaster v. Philadelphia Elec. Co., 386 F.Supp. 934 (E.D.Pa.1975)). See also Robinson v. Court of Common Pleas of

Philadelphia County, 827 F. Supp. 1210, 1211 (E.D. Pa. 1993)(stating that the Court of Common Pleas... and Philadelphia Municipal Court are trial courts within the First Judicial District).

Given the strong weight of legal authority, Plaintiff's arguments to the contrary are summarily dismissed. Accordingly, this Court grants Defendant Court of Common Pleas of Philadelphia County's motion to dismiss pursuant to FRCP 12(b)(6).

### **CONCLUSION**

For the aforementioned reasons, Defendants' Motions to Dismiss are Granted. An appropriate Order will be entered in accordance with this memorandum opinion.



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**CIVIL ACTION**

**NO. 04-0556**

**AND NOW**, this \_\_\_\_\_ day of December, 2004, upon consideration of Motions to **Dismiss pursuant to Federal Rule of Civil Procedure by Defendants Thomas Costello and City of Philadelphia (Doc. 7) and Defendant Court of Common Pleas of Philadelphia (Doc. 9), and Plaintiff's briefs in opposition thereto (Docs. 13, 14, 15), IT IS HEREBY ORDERED AND DECREED** that the Motions to Dismiss are **GRANTED**.

**BY THE COURT:**

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**Hon. Petrese B. Tucker, U.S.D.J.**