

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

AMIR HAKIM MCCAIN a/k/a : CIVIL ACTION  
JOHN MCCAIN : 04-5513  
 :  
Plaintiff, :  
 :  
v. :  
 :  
PAUL HENRIKSEN, THOMAS W. :  
DOLGENOS AND LYNNE ABRAHAM, :  
 :  
Defendant. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

JULY 29, 2005

Plaintiff, Amir Hakim McCain, a state prisoner, has filed a pro se 42 U.S.C. § 1983 civil rights complaint against Philadelphia Assistant District Attorneys Paul Henriksen and Thomas W. Dolgenos, and District Attorney Lynne Abraham. Plaintiff alleges that the defendants failed to have two state witnesses, Lani Dickerson and James Moore, medically tested for genital herpes infection prior to testifying at his criminal trial in 1990. Plaintiff asserts that he was thereby deprived of the opportunity to "challenge the credibility" of these witnesses, who denied having the disease. As relief, plaintiff requests that Lani Dickerson and James Moore be tested for genital herpes.

## I. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 1915A, in a civil action brought by a prisoner against a governmental officer or employee the Court shall review the complaint as soon as practicable after docketing and dismiss the complaint or any portion thereof if the complaint "(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief."

## II. DISCUSSION

"An action brought under 42 U.S.C. § 1983 is subject to the state statute of limitations that governs actions for personal injury." Gibson v. Superintendent of N.J. Dep't of Law & Pub. Safety-Div. of State Police, 411 F.3d 427, 435 (3d Cir. 2005). The statute of limitations for personal injury actions in the Commonwealth of Pennsylvania is two years. 42 Pa. C.S.A. § 5524. Unless otherwise tolled, the limitations period on § 1983 claims begins to run "from the time when the plaintiff knows or has reason to know of the injury which is the basis of the [§]1983 action." Gibson, 411 F.3d at 435. Plaintiff claims that the defendants violated his constitutional rights at his criminal trial in 1990, when they failed to order medical testing of state witnesses Lani Dickerson and James Moore. Because plaintiff's complaint was filed in this Court on November 29, 2004, more than two years after the alleged violations of his constitutional

rights, this action is now time-barred and will be dismissed for that reason.<sup>1</sup>

### III. CONCLUSION

For the foregoing reasons, the Court finds that the instant complaint is frivolous and dismissal of this action is appropriate.

An appropriate Order follows.

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<sup>1</sup> A state prisoner's § 1983 action "challenging the conduct of state officials who, the prisoner claimed, had unconstitutionally caused his conviction by improperly investigating his crime," will not lie "if success in that action would necessarily demonstrate the invalidity of confinement or its duration." Wilkinson v. Dotson, 125 S.Ct. 1242, 1247 (2005) (citing and quoting Heck v. Humphrey, 512 U.S. 477, 479 (1994)). In such a case the statute of limitations would not begin to run until the prisoner's conviction is overturned since that is when the cause of action accrues. Heck, 512 U.S. at 489. On the other hand, a § 1983 action "remains available for procedural challenges where success in the action would not necessarily spell immediate or speedier release for the prisoner." Wilkinson, 125 S.Ct. at 1247. Under these circumstance the statute of limitation would begin to run "from the time when the plaintiff knows or has reason to know of the injury which is the basis of the [§] 1983 action." Gibson, 411 F.3d at 435.

In the instant matter, plaintiff's due process claim would not spell his immediate or speedier release. At most, it would provide plaintiff with evidence that could be used for challenging his conviction in a separate proceeding. Thus, while plaintiff's conviction has not been invalidated his § 1983 action may still proceed. However, the statute of limitations in this case began to run in 1990 when plaintiff knew or should have known that defendants did not order medical testing of state witnesses Lani Dickerson and James Moore.

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ORDER

**AND NOW**, this **29th day** of **July, 2005**, it is hereby  
**ORDERED** that the case is **DISMISSED AS FRIVOLOUS**.

**IT IS FURTHER ORDERED** that the case shall be marked  
**CLOSED**.

**AND IT IS SO ORDERED**.

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**EDUARDO C. ROBRENO, J.**