

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

DERRICK STARKS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 05-3352
	:	
CITY OF PHILADELPHIA,	:	
MAYOR JOHN F. STREET,	:	
DISTRICT ATTORNEY LYNNE	:	
ABRAHAM,	:	
GUY SCIOLLA,	:	
JACK MEYERS,	:	
and JOSEPH SANTAGUIDA,	:	
Defendants.	:	

MEMORANDUM

On October 28, 2005, this Court issued a Memorandum and Order dismissing *pro se* plaintiff Derrick Starks' 42 U.S.C. §§ 1981, 1983, 1985, and 1986 claims for being time-barred by the statute of limitations. Starks now brings this motion to reconsider while simultaneously appealing to the Third Circuit and requesting *in forma pauperis* status.

I. BACKGROUND

The background facts laid out in the Courts' October 28, 2005 Memorandum remain the operative facts for this motion to reconsider.

On June 27, 1980, Starks was convicted of Felony Murder, Possessing an instrument of crime, and Criminal Conspiracy. He was sentenced to life imprisonment for the murder and a consecutive ten-to-twenty years prison term for the other charges. On June 30, 2005, Starks commenced this action alleging his 1980 conviction was the result of fraud and more specifically that assistant District Attorney Guy Sciolla colluded with defense attorneys Jack Myers and Joseph Santaguida to conceal and

withhold information that Starks contends was exculpatory.¹ Starks is currently seeking in excess of 15 million dollars in damages. The defendants City of Philadelphia along with Mayor Street, Joseph Santaguida, and District Attorney Lynne Abraham appear[ed] with former assistant district attorney Guy Sciolla [and filed motions to dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6).]

After the Court granted the defendants' motions to dismiss, Starks filed his motion to reconsider and continues to argue that his defense attorney colluded with the assistant district attorney. In the Court's Memorandum, Starks' claims were declared time-barred by the statute of limitations. Starks argued, and continues to argue, that although his claims would ordinarily be time-barred, the discovery rule or the doctrine of equitable tolling should apply in this case.

II. STANDARD OF REVIEW

Motions for reconsideration, as a general rule, are granted sparingly and only in limited circumstances. See Dentsply Int'l. v. Kerr Mfg. Co., 42 F. Supp. 2d 385, 419 (D. Del. 1999). A party bringing a motion seeking to alter or amend an order, pursuant to Fed. R. Civ. P. 59(e), must establish one of three grounds: (i) there is an intervening change in controlling law, (ii) new evidence has become available, or (iii) there is a need to correct the court's clear error of law or fact or to prevent manifest injustice. Max's Seafood Cafe v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citing North River Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). Furthermore, motions for reconsideration "should not be used to rehash arguments already briefed." Dentsply, 42

¹The statements relate to one of Starks' brother's confession to taking part in the robbery.

F. Supp. 2d at 419. BP Amoco Chem. Co. v. Sun Oil Co., 200 F. Supp. 2d 429, 432 (D. Del. 2002).

III. DISCUSSION

Although Starks misquotes the Court's October 28, 2005 Memorandum to suit his own arguments for his motion to reconsider, the heart of his claim continues to be that, consistent with the court's holding in Oshiver v. Levin, Sedren, & Berman, 38 F.3d 1380 (3d Cir. 1994), this Court should apply the doctrine of equitable tolling.

Equitable tolling functions to stop the statute of limitations from running where the claim's accrual date has already passed. Cada, 920 F.2d at 450. We have instructed that there are three principal, though not exclusive, situations in which equitable tolling may be appropriate: (1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.

Oshiver at 1387 (citing School District of City of Allentown v. Marshall, 657 F.2d 16, 19-20 (3d Cir. 1981) (quoting Smith v. American President Lines, Ltd., 571 F.2d 102, 109 (2d Cir. 1978); See also Miller v. Beneficial Management Corp., 977 F.2d 834, 845 (3d Cir. 1992) (citation omitted))). In this case, none of the three requirements has been met. As discussed in the Court's prior Memorandum, Starks has not been misled about a possible cause of action and he has had ample opportunities to argue his claims in the appropriate courts. October 28, 2005, Memorandum at 3-6.

IV. CONCLUSION

Starks' motion to reconsider does not attempt to present newly discovered evidence or to correct a manifest error of law to prevent injustice. Furthermore, no intervening change in the law has taken place. Starks' motion to reconsider is another attempt to argue his case and is denied accordingly. An appropriate order follows.

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Defendants.	:	

ORDER

AND NOW, this day of December, 2005, upon consideration of plaintiff's Motion for Reconsideration (Docket # 17), it is hereby **ORDERED** that the Motion is **DENIED**. This case shall be marked closed for all purposes by the Clerk of Courts.

BY THE COURT:

LAWRENCE F. STENGEL, J.