

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

JOHN JONES ET AL.
Plaintiffs,

v.

MIDDLETOWN TOWNSHIP ET AL.
Defendants.

CIVIL ACTION NO. 05-CV-3719

MEMORANDUM AND ORDER

Tucker, J.

June 21, 2006

Presently before this Court are five (5) Motions to Dismiss. For the reasons set forth below, upon consideration of Defendants' Motions (Docs. 6, 11, 12, 13, 14), Plaintiffs' Responses (Docs. 10, 16, 19, 20, 23), Defendants' Replies (Docs. 17, 22, 24), Plaintiffs' Sur-replies (Docs. 25, 26, 27), and the parties' Supplemental Memoranda (Docs. 18, 28, 29), this Court will grant all Defendants' Motions to Dismiss. Plaintiffs' Complaint is **DISMISSED WITH PREJUDICE** pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which this Court may grant relief.

BACKGROUND

From the evidence of record, taken in the light most favorable to the Plaintiffs, the pertinent facts are as follows. *Pro se* Plaintiffs, John Jones, Sr. and Gail K. Jones ("the Joneses"), bring the instant civil rights action, pursuant to 42 U.S.C. §§ 1983,¹ 1985,² 1986,³ and

¹Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in

1988,⁴ and alleging violation of their rights under the Pennsylvania Constitution, as well as

equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983.

²Section 1985 provides in relevant part:

. . . . If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985 (3).

³Section 1986 provides in relevant part:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 U.S.C. § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. § 1986.

⁴Section 1988 provides in relevant part:

In any action or proceeding to enforce a provision of . . . [42 U.S.C. §§ 1981-1983, 1985, 1986] . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction

42 U.S.C. § 1988.

various Pennsylvania laws, against Defendants Middletown Township, Sgt. John Feeney, Officer Brian Reeves, Unnamed Middletown Police Officers (collectively, “Middletown”); Lower Southampton Township, Chief Edward Donnelly, Detective-Sergeant Raymond Weldie, Corporal Michael Pennington, Officer Stephen Castle, Officer Raymond Young, Officer Peter Liese (collectively, “Lower Southampton”); Lynn Castle (“Castle”); Bucks County District Attorney Diane Gibbons (“Gibbons”); and Marcia Compton (“Compton”), all individually and in their official capacities.

In their seventeen-count Complaint, the Joneses allege that the various Defendants violated their federally-protected First, Second, Fourth, Fifth, Sixth, Eighth, Ninth, Thirteenth, and Fourteenth Amendment rights; individually caused the Joneses to suffer abuse of process, malicious prosecution, malicious arrest, false arrest, invasion of privacy, trespass, intentional infliction of emotional distress, mental anguish and pain and suffering, slander and libel, a loss of consortium, and conspiracy to effect the same, all in violation of Pennsylvania state law. (Compl. *passim*.) As such, the Joneses seek declaratory and injunctive relief, as well as compensatory and punitive damages and attorney’s fees.

In response, Middletown Defendants, Lower Southampton Defendants, Castle, Gibbons, and Compton each assert in their respective Motions to Dismiss that the Joneses’s Complaint, inter alia, is barred by the applicable statutes of limitations, and should therefore be dismissed for its failure to state a claim upon which relief can be granted. Specifically, Defendants argue that because Plaintiffs filed their Complaint on July 18, 2005, any conduct alleged to have occurred prior to July 18, 2003 cannot form the basis of the instant cause of action.

LEGAL STANDARD

In considering a motion to dismiss under Rule 12(b)(6), the court “must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief.” Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted), *cert. denied*, 489 U.S. 1065 (1989); see Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The question is whether the plaintiffs can prove any set of facts consistent with their allegations that will entitle them to relief, not whether they will ultimately prevail. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Moreover, the claimants must set forth sufficient information to outline the elements of their claims or to permit inferences to be drawn that these elements exist. See FED. R. CIV. P. 8(a)(2); Sadruddin v. City of Newark, 34 F. Supp. 2d 923, 925 (D.N.J., 1999) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). A motion to dismiss may be granted 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.” Conley, 355 U.S. at 45-46 (1957).

DISCUSSION

Under Pennsylvania law, an action for libel, slander, or invasion of privacy must be commenced within one year;⁵ any personal injury action for false imprisonment, false arrest, malicious prosecution, malicious abuse of process, trespass, an action for taking, detaining or injuring personal property, or any other action or proceeding founded on negligent or intentional

⁵42 PA. CONS. STAT. § 5523.

tortious conduct must be commenced within two years.⁶ While there is no federal statute of limitations for actions brought pursuant to § 1983, the Third Circuit has articulated the Supreme Court’s holding in Wilson v. Garcia ““that all § 1983 actions should be classified as claims for personal injury for the purpose of determining the limitations period under the applicable state law.”” Kost v. Kozakiewicz, 1 F.3d 176, 190 (3d Cir. 1993) (citing Wilson v. Garcia, 471 U.S. 261, 272-76 (1985)). Furthermore, the Third Circuit stated in Kost that for statute of limitations purposes, in actions alleging conspiracy to deprive a claimant of federally protected rights, brought pursuant to §§ 1985 and 1986 such as in the instant matter, plaintiffs are “required to seek redress for each act of the alleged conspiracy causing injury within two years of its occurrence.” Id. In other words, the statute of limitations applicable to the Joneses’ federal civil conspiracy claim is that which is applicable to personal injury, libel, slander, and invasion of privacy claims that the Joneses have alleged pursuant to § 1983 in the Complaint—two years for the personal injury claims, and one year for the alleged libel, slander, and invasion of privacy.

Plaintiffs allege throughout the Complaint violations of their rights occurring on or before August 31, 2002; October 3, 2002; October 20, 2002; October 30, 2002; and July of 2003. Given that Plaintiffs are time-barred from seeking relief pursuant to § 1983, § 1985, or §1986, for any conduct that occurred before July 18, 2003, Plaintiffs have failed to state a claim upon which relief may be granted for conduct alleged to have occurred on or before August 31, 2002; October 3, 2002; October 20, 2002; and October 30, 2002.

With respect to the conduct Plaintiffs allege occurred in July of 2003, Mr. Jones alleges that he was acquitted in July 2003 of charges relating to his claim that Defendants conspired to

⁶42 PA. CONS. STAT. § 5524.

violate his civil rights. (Compl. 16). However, Exhibit “A” to Defendant Gibbons’s Motion to Dismiss demonstrates clearly that Mr. Jones was, in fact, convicted, not acquitted, on July 18, 2005 of two of three counts of stalking, and his Petition for Allowance of Appeal was denied on October 5, 2005.⁷ (Gibbons’s Mot. to Dismiss ¶ 12; Exh. “A”; Exh. “B”) Therefore, even assuming arguendo that Plaintiffs’ Complaint was timely filed as it relates to Mr. Jones’s July 18, 2003 criminal proceeding, Mr. Jones is not entitled to a remedy sought pursuant to § 1983, § 1985, or § 1986 for an allegedly unconstitutional conviction where he has actually been convicted because he cannot prove that “the conviction or sentence had been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus under 28 U.S.C. § 2254.” Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).⁸

CONCLUSION

For the foregoing reasons, Defendants’ Motions to Dismiss are granted. An appropriate order follows.

⁷While it is true that the Court must take all the well pleaded allegations as true and construe the complaint in the light most favorable to the plaintiff when considering a motion to dismiss under Rule 12(b)(6), the Court is also obligated to make a “*reasonable* reading of the pleadings [to assess whether] the plaintiff may be entitled to relief.” Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted), *cert. denied*, 489 U.S. 1065 (1989); see Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The question is whether the plaintiffs can prove any set of facts consistent with their allegations that will entitle them to relief, not whether they will ultimately prevail. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Because the exhibits offered by Defendant Gibbons in support of her Motion to Dismiss frame the question of whether Mr. Jones here can prove any set of facts consistent with his alleged unconstitutional conviction, the Court will consider Gibbons’s filings in determining whether Plaintiffs claims may go forward.

⁸To the extent that any of the Joneses’s claims for damages could otherwise arise under the Pennsylvania Constitution, the Joneses still cannot proceed with their action as the Commonwealth Court has held that there is not a private right of action for damages under the Pennsylvania Constitution in case involving alleged police misconduct. Jones v. City of Philadelphia, 890 A.2d 1188 (Pa. Commw. Ct. 2006).

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

JOHN JONES ET AL.

Plaintiffs,

v.

MIDDLETOWN TOWNSHIP ET AL.

Defendants.

CIVIL ACTION NO. 05-CV-3719

ORDER

AND NOW, this ____ day of June, 2006, upon consideration of Defendants', Middletown Township, John Feeney, and Brian Reeves ("Middletown Defendants") Motion to Dismiss (Doc. 6), Plaintiffs' Response (Doc. 10), and Defendants' Reply (Doc. 17), **IT IS HEREBY ORDERED and DECREED** that Defendants' Motion is **GRANTED**.

Upon consideration of Defendant Diane Gibbons's Motion to Dismiss (Doc. 11) and Plaintiffs' Response (Doc. 16), **IT IS HEREBY ORDERED and DECREED** that Defendant's Motion is **GRANTED**.

Upon consideration of Defendant Marcia Compton's Motion to Dismiss (Doc. 12) and Plaintiffs' Response (Doc. 19), **IT IS HEREBY ORDERED and DECREED** that Defendant's Motion is **GRANTED**.

Upon consideration of Defendants', Raymond Weldie, Michael Pennington, Stephen Castle, Raymond Young, Peter Liese, Lower Southampton Township, and Edward Donnelly ("Lower Southampton Defendants") Motion to Dismiss Counts 5 through 9, 11, 12, and 14 through 17 of the Complaint (Doc. 13), and Plaintiffs' Response (Doc. 20), **IT IS HEREBY ORDERED and DECREED** that Defendants' Motion is **GRANTED**.

Upon consideration of Defendant Lynn Castle's Motion to Dismiss Counts 10, 14, 15, 16, and 17 (Doc. 14), Defendant's Supplemental Memorandum (Doc. 18), and Plaintiffs' Response (Doc. 23), **IT IS HEREBY ORDERED and DECREED** that Defendants' Motion is **GRANTED**.

IT IS FURTHER ORDERED that upon consideration of Defendant Marcia Compton's Motion for Leave to File a Reply Brief (Doc. 21), the Motion is **DISMISSED AS MOOT**.

The Clerk of the Court shall mark the above-captioned case **CLOSED**.

BY THE COURT:

/S/ Petrese B. Tucker

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