

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

ANTONIO PENDERGRASS,	:	CIVIL ACTION
Plaintiff,	:	NO. 06-2247
	:	
v.	:	
	:	
OFFICER RAUL GRAY, et. al.,	:	
Defendants.	:	

MEMORANDUM AND ORDER

Stengel, J.

October 30, 2006

Plaintiff Antonio Pendergrass filed a Section 1983 against the Philadelphia Police alleging use of excessive force during his arrest on May 25, 2004. Before the Court is a motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure filed by Philadelphia Police Officers Raul Gray, James Wagner, Keith Scott, and Alfonse Johnson (“Defendants”). Defendants argue that Mr. Pendergrass’ complaint is untimely and barred by the statute of limitations. Mr. Pendergrass responds that the Court should apply the mailbox rule to find that his complaint was timely filed. For the reasons that follow, I will deny the motion.

I. BACKGROUND¹

On May 25, 2004, Defendants, who are four Philadelphia Police Officers, used excessive force on Mr. Pendergrass during an arrest. Mr. Pendergrass stated that Defendant Gray held him up against a gate and laughed while the other defendants hit

¹The facts are taken from the complaint and are accepted as true for the purposes of this motion.

him. Mr. Pendergrass never resisted the arrest and was handcuffed while the beating occurred. Mr. Pendergrass was unconscious when he was transported to Mercy Fitzgerald Hospital, where he was treated for the injuries. As a result of this attack, Mr. Pendergrass received three to four stitches to the back left side of his head, a fractured left cheek, cuts on the face, and certain internal bleeding.

Mr. Pendergrass recently became aware of his rights under Section 1983. On May 22, 2006, Mr. Pendergrass dated his complaint and mailed it the same day when he realized he was approaching the statutory deadline. On May 26, 2006, the clerk docketed Mr. Pendergrass' motion for leave to proceed *in forma pauperis*. This Court denied the motion without prejudice on June 1, 2006 because Mr. Pendergrass failed to file a certified copy of his prisoner account statement. On June 13, 2006, Mr. Pendergrass submitted the account statement. On June 19, 2006, the court granted Mr. Pendergrass' *in forma pauperis* petition and Mr. Pendergrass filed his Section 1983 complaint, alleging police brutality and seeking compensatory and punitive damages. Defendants filed a Motion to Dismiss on August 21, 2006 arguing that the two-year statute of limitations barred the complaint. Mr. Pendergrass responded in opposition on September 28, 2006.

II. STANDARD OF REVIEW

The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In ruling on a motion to dismiss on the basis of the statute of

limitations, a court must determine whether the statement of the claim shows that the cause of action has been brought within the statute of limitations time period. Jordan v. Crandley, No. 99-915, 1999 U.S. Dist. LEXIS 13918 at *2 (E.D. Pa. Sept. 7, 1999). The court may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Id. See also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

III. DISCUSSION

A. Mr. Pendergrass had to file by May 25, 2006 for his complaint to be timely.

Section 1983 does not contain its own statute of limitations. Therefore, the Supreme Court directs federal courts to find and apply an analogous state statute of limitations. Goman v. Lukens Steel Co., 482 U.S. 656, 660 (1987). Section 1983 claims are analogous to tort claims. Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 78 (3d Cir. 1989). Therefore, Section 1983 actions must be filed within two years of the date on which the claim accrues. 42 PA. CONS. STAT. § 5524 (2006)

Courts look to federal law to determine the date of accrual. Civil rights actions accrue on the date when the plaintiff knew or had reason to know of the injury that is the

basis for his claim. Jackson v. Nicoletti, 875 F. Supp.1107, 1009 (E.D. Pa. 1994). In a Section 1983 claim for excessive use of force by the police during an arrest, the date of accrual is the date of the arrest in question. Id.

A two-year statute of limitations applies to Mr. Pendergrass' Section 1983 claim. Mr. Pendergrass alleges that Defendants violated his civil rights by using excessive force during his arrest on May 25, 2004. For Mr. Pendergrass' complaint to be considered timely, he must have filed by May 25, 2006.

B. Since Mr. Pendergrass signed the complaint on May 22, 2006, within the statutory period, the prisoner mailbox rule applies and therefore his complaint is timely and not barred by the statute of limitations.

The general rule is that a complaint is considered filed when the filing fee is paid or the request to proceed *in forma pauperis* is granted. Taylor v. Naylor, No. 04-1826, 2006 U.S. Dist. LEXIS 27322 at *7-8, (W.D. Pa. Apr. 6, 2006). In Houston v. Lack, 487 U.S. 266 (1988), the Supreme Court created an exception to this general rule. In Houston, the Court recognized the unique situation of *pro se* petitioners who litigate without the assistance of counsel and rely on the prison system to mail their legal documents in a timely fashion since they cannot personally travel to the courthouse. Houston creates a prisoner mailbox rule whereby a document is considered filed the moment the petitioner delivers it to prison officials to forward to the court clerk. Id. at 276. The Court specifically rejected an argument that this rule would be difficult to apply by reasoning that reference to prison mail logs would establish a bright line rule. Id. at

275.

Although the specific facts of Houston involved a notice of appeal, the Third Circuit has joined other Circuit courts in applying the prisoner mailbox rule beyond the context of *habeas corpus* petitions to other prisoner filings including Section 1983 actions. Burns v. Morton, 134 F.3d 109, 112-113 (3d Cir. 1998)(“We have applied Houston to various filings of pro se prisoners outside the context of habeas corpus. In an action under 42 U.S.C. § 1983, we extended Houston to apply to the filing of a motion for reconsideration under Fed. R. Civ. P. 59(e). Smith v. Evans, 853 F.2d 155 (3d Cir. 1988). Other courts have applied Houston to find prisoners' § 1983 complaints timely. E.g., Dory v. Ryan, 999 F.2d 679, 682 (2d Cir. 1993), modified on reh'g, 25 F.3d 81 (2d Cir. 1994); Garvey v. Vaughn, 993 F.2d 776, 782 (11th Cir. 1993); Lewis v. Richmond City Police Dept., 947 F.2d 733, 736 (4th Cir. 1991).”).

When applying the mailbox rule to filings made by prisoner *pro se* litigants, the Third Circuit refuses to apply the mailbox rule when the prisoner’s delay—not the prison—caused the filing to be untimely. For example, Houston did not apply to an untimely motion to amend judgment of a Section 1983 claim because the “motion was out of time before he even gave the motion to prison officials to mail” and therefore prison delay in mailing was not a factor in making the motion untimely. Smith v. Evans, 853 F.2d 155, 156-57 (3d Cir. 1988); see also Akinola v. Doe, No. 05-4454, 165 Fed. Appx. 242 (3d Cir. Mar. 15, 2006) (affirming district court’s dismissal of Section 1983 action

filed four years after the claim accrued); Walker v. Fisher, No. 05-1437, 150 Fed. Appx. 160, 161-162 (3d Cir. Oct. 6, 2005) (holding Walker's Section 1983 claim was barred by the statute of limitation because he filed nearly a year after the limitations period had expired).

In contrast, the Third Circuit has applied Houston's mailbox rule outside of the *habeas* context when the prisoner *pro se* litigant dated the filing within the time limit but the court docketed it after the deadline. Askew v. Jones, No. 04-3900, 160 Fed. Appx. 140 (3d Cir. Dec. 13, 2005)(applying Houston's mailbox rule to a motion for reconsideration with a ten-day limit where letter was dated within the time limit but docketed nine days later). Moreover, many district courts have applied the mailbox rule by using the date the prisoner signed the complaint as the date it was filed. Taylor v. Naylor, No. 04-1826, 2006 U.S. Dist. LEXIS 27322 at *7-8, (W.D. Pa. Apr. 6, 2006)(“given the evidentiary difficulty in determining when a prisoner relinquishes control of the complaint to prison personnel, the date the plaintiff signed the original complaint is presumed to be the date plaintiff gave the complaint to prison officials to be mailed.”)(citation omitted); Sabella v. Troutner, No. 3:CV-05-0427, 2006 U.S. Dist. LEXIS 5862 at *10-11 (M.D. Pa. Jan. 31, 2006)(looking at date plaintiff signed Section 1983 complaint to deem it timely and denying the motion to dismiss on statute of limitations grounds); Gibbs v. Deckers, 234 F. Supp. 2d 458, 462 (D. Del. 2002); Laboy v. Del. Corr. Ctr., 2004 U.S. Dist. LEXIS 3101 at *10 (D. Del. 2004)(“...the date on the

document is treated as the date of filing”).

Defendants’ memorandum in support of their motion to dismiss relies on a twelve-year old district court decision that refused to extend Houston to a *pro se* litigant on facts similar to this case. In that case, the petitioner signed the complaint on June 1, 1994, ten days before the statute of limitations deadline. Jackson v. Nicoletti, 875 F. Supp.1107, 1114 (E.D. Pa. 1994). However, the clerk of courts received the complaint on July 8, 1994 and stamped it filed on July 11, 1994, one month after the statute of limitations deadline had passed. Id. See also Lanning v. City of Philadelphia, No. 97-2179, 1997 U.S. Dist. LEXIS 15475 at *4-6 (E.D. Pa. Sept. 30, 1997)(following Jackson and refusing to apply Houston’s mailbox rule to a prisoner’s Section 1983 claim dated a day before the statute of limitations deadline but received by the clerk one month after the deadline). Jackson and Lanning exemplify a view that is out of step with the majority of the courts in this Circuit who are willing to apply Houston more liberally.

Applying the majority position, Mr. Pendergrass’ complaint is timely under the prisoner mailbox rule. Mr. Pendergrass had until May 25, 2006 to file a complaint, two years after the date of his arrest where police allegedly used excessive force during his arrest. Mr. Pendergrass’ complaint is dated May 22, 2006, three days before the statutory deadline. Even though the court did not docket his motion to proceed *in forma pauperis* until May 26, 2006, the signature on the complaint governs under the prisoner mailbox rule. Therefore, Mr. Pendergrass’ complaint will not be dismissed as untimely.

VI. CONCLUSION

For the reasons stated above, I will deny the Defendant's motion to dismiss.

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ORDER

AND NOW, this 30th day of October, 2006, upon consideration of Defendant's Motion to Dismiss (Document No. 9) and Plaintiff's response thereto, it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel _____
LAWRENCE F. STENGEL, J.