

Von Kiel (identified in the amended complaint as "Dr. Vonkiel"), a doctor at Lehigh County Prison, that he would receive a cell on the prison's lower level because the foot and body braces he wears for his herniated discs make it difficult for him to negotiate stairs.

Nonetheless, on December 15, 2002, the plaintiff was moved to a cell on the second floor of the prison. He informed a prison official of his need for a bottom-tier room because of his back and foot problems, but the official told him that the room request was not in the computer. The plaintiff alleges that it was defendant Bahnick (identified in the original complaint and "Bonhih"), a nurse at Lehigh County Prison, who failed to place his request for a bottom-tier cell in the computer.

On December 16, 2002, the plaintiff fell down the stairs, and his head got stuck between the railings, causing severe neck pain. The plaintiff was placed on a board and carried to the prison's medical facility, where he sat for 45 minutes without receiving care. When he was eventually seen by the medical staff, which is supervised by defendant Wexford Health Sources (identified in the original complaint as "Wexford Medical Services"), he asked them, and specifically Von Kiel, for an MRI to make sure there was no further injury to his neck. They declined, saying it would be too expensive.

The plaintiff was given over-the-counter medicine,

which was insufficient to relieve his severe pain. When the supply ran out, he sought additional medication from the Wexford staff, which ignored his requests. The plaintiff was then transferred to SCI Camp Hill Classification Center, where Dr. Latsky, also employed by Wexford, similarly refused to prescribe additional medicine to relieve the plaintiff's pain.

On March 20, 2003, the plaintiff was transferred to SCI-Rockview, where he suffered severe pain, partial paralysis, tingling and numbness down both arms and legs, convulsions, and uncontrollable shaking. A doctor told him that his fall at Lehigh County Prison aggravated his herniated discs and prescribed him morphine.

The plaintiff then submitted a grievance to defendant Meisel, the warden of Lehigh County Prison, concerning the indifference of Von Kiel, Bahnick, and the Wexford Medical staff to his pain, but the warden never replied.

II. Claims

The plaintiff initiated this lawsuit by filing a motion to proceed in forma pauperis on August 3, 2005. He named Von Kiel, Bahnick, Meisel, Wexford Medical Sources, the Lehigh County Commissioners, Lehigh County Prison, and John Does 1-10 as defendants. The defendants moved to dismiss, but the motions were mooted by the plaintiff's amended complaint, filed on June

30, 2006. The amended complaint dropped the Lehigh County Commissioners, Lehigh County Prison, and John Does 1-10 as defendants, and alleges that the remaining defendants were indifferent to his medical needs in violation of his due process right under the Fourteenth Amendment and the prohibition against cruel and unusual punishment contained in the Eighth Amendment.

Specifically, he claims that his rights were violated by: 1) Von Kiel's failure to secure him a bottom-tier cell, prescribe adequate painkillers, and perform an MRI; 2) Bahnick's failure to enter his bottom-tier request into the computer; 3) Wexford Medical Sources's failure to train and supervise its employees and adequately fund its services; and 4) Meisel's knowledge and acquiescence to the conduct of the other three defendants.

III. Discussion

The defendants argue that the plaintiff's claims should be dismissed because of the statute of limitations and because of his failure to state a claim under section 1983. The Court finds the statute of limitations argument dispositive.²

² The plaintiff has not filed any opposition to the motions to dismiss the amended complaint. (The motions were filed in July of 2006, and the plaintiff's opposition, after the Court granted him two extensions of time in which to respond, was due on January 8, 2007.) He did, however, file a memorandum of law in response to the defendants' motions to dismiss the original complaint at the same time he filed his amended

The expiration of the statute of limitations is ordinarily raised as an affirmative defense, but it may be asserted in a Rule 12(b)(6) motion to dismiss if it is clear from the face of the complaint that a claim is untimely. Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002); Bethel v. Jendeco Construction Corp., 570 F.2d 1168, 1174 (3d Cir. 1978). See also 5B Wright & Miller, Federal Practice and Procedure § 1357 at 708 (3d ed. 2004) (“[T]he complaint is also subject to dismissal under Rule 12(b)(6) when its allegations indicate the existence of an affirmative defense that will bar the award of any remedy[.]”)

Section 1983 claims originating in Pennsylvania borrow Pennsylvania’s two year statute of limitations for personal injury actions. Lake v. Arnold, 232 F.2d 360, 368-69 (3d Cir. 2000). The plaintiff’s fall and alleged maltreatment at Lehigh County Prison occurred in December of 2002. The plaintiff filed his motion to proceed in forma pauperis on August 3, 2005, more than two years after his claims arose, and therefore his suit is time-barred.

The plaintiff argues that his claims are timely because of the discovery rule. The discovery rule tolls the statute of limitations when a plaintiff is unable, despite the exercise of due diligence, to know of an injury or its cause. Mest v. Cabot

complaint. That memorandum responded to the defendants’ statute of limitations argument.

Corp., 449 F.3d 502, 510 (3d Cir. 2006). When the plaintiff discovers, or exercising reasonable diligence, should have discovered, the injury and its cause, the statute of limitations begins to run. Id. at 511.

Whether a plaintiff should have made a timely discovery of his injury is ordinarily a question for the jury. Bohus v. Beloff, 950 F.2d 919925 (3d Cir. 1991). But a court can grant a motion to dismiss on statute of limitations grounds, despite a plaintiff's invocation of the discovery rule, if the complaint reveals that the discovery rule does not apply as a matter of law. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1391 (3d Cir. 1994); Reinsmith v. Borough of Bernville, 2003 WL 22999211 at *5 n.3; McDowell v. Raymond Industries Equipment, Ltd., 2001 WL 115463 at *2 (E.D. Pa. 2001); Credit Control Services v. Greate Bay Hotel and Casino, Inc., 1994 WL 483454 at *5 (E.D. Pa. 1994); Cardone v. Pathmark Supermarket, 658 F.Supp. 38, 40 (E.D. Pa. 1987).

The plaintiff alleges that he did not know that his current pain and suffering were the result of his fall at Lehigh County Prison until he was examined by the doctor at SCI-Rockview. But the cause of his pain is immaterial to his section 1983 claims that allege that the medical treatment he received from the prison staff was deficient. The injury underlying these claims is the prison staff's indifference to his "severe and

excruciating pain." Compl. ¶ 13. This indifference was immediately apparent to the plaintiff, and therefore the discovery rule does not apply.

Nor can the discovery rule save the plaintiff's claims stemming from the defendants' negligence in assigning him a second-floor cell. The complaint alleges that the plaintiff's head was lodged in a railing after the fall and that he was subsequently carried away on a board, demanded an MRI to determine the extent of the damage, and was prescribed over-the-counter medicine, which was insufficient to curb his pain. Compl. ¶ 9, 11, 13. Given the immediacy and severity of the pain following the fall, no reasonable person could have failed to connect the injury with the fall down the stairs.

If anything, the plaintiff's invocation of the discovery rule is a claim that he did not know the full extent of his injury until he saw the doctor at SCI-Rockview. The discovery rule was not intended to protect a plaintiff who knows that he has been injured and knows the identity of the alleged tortfeasors but is ignorant of the full extent of his injury. See, e.g., Mest, 449 F.3d at 510-11 ("for the statute of limitations to run, the plaintiff need not know the exact nature of his injury")(citations omitted); Charowsky v. Kurtz, 2000 WL 1052986 at *3 (E.D. Pa. 2000); Credit Control Services, 1994 WL 483454 at *5; Cardone, 658 F.Supp. at 40.

For all of these reasons, the facts alleged in the amended complaint show that the discovery rule does not apply as a matter of law, and therefore the statute of limitations has run.

Further, the plaintiff's claims would not survive even if the Court were to conclude that the discovery rule applied to his case. At the very latest, the plaintiff "discovered" his injury when he was seen by the doctor at SCI-Rockview after his transfer to the facility in March of 2003, and this suit was not filed until August of 2005.

The Court, therefore, will grant the motions to dismiss because accepting the allegations in the amended complaint as true, the statute of limitations has run.

An appropriate order follows.

