

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

CHARMAINE PRATER COLON	:	
McCOULLUM	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 97-6711
CITY OF PHILADELPHIA POLICE	:	
DEPT., FORMER COMMISSIONER	:	
WILLIE WILLIAMS, LT. PICKARD,	:	
LT. KENNER, SGT. T. CAMPANNA,	:	
and SGT. ROBERT TUCKER	:	
Defendants.	:	

**MEMORANDUM-ORDER**

**GREEN, S.J.**

**August     , 1998**

Presently before the court is Defendants' unopposed Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c). Plaintiff filed the complaint in this action on February 17, 1998 alleging that actions taken by Defendants resulted in the termination of her employment with the Philadelphia Police Department in violation of 42 U.S.C. § 1983. Specifically, Plaintiff alleges that she was terminated as a result of an incident on March 4, 1990 involving a physical altercation with three women and defamatory comments made by Defendants related to said incident. For the following reasons, Defendants' Motion will be granted.<sup>1</sup>

Although Defendants do not raise the issue of res judicata, this court notes from the outset that the above-captioned matter and the claims asserted by Plaintiff therein are the same claims

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<sup>1</sup> Plaintiff has requested by letter motion that this court stay any proceedings in the above-captioned matter due to her present incarceration. As the present motion will be decided on the grounds of res judicata and statutes of limitations, the court will dispose of the motion at this time as a matter of law.

Plaintiff raised in a prior civil action filed July 1, 1993 and captioned 93-CV-422. In civil action 93-422, Plaintiff named as defendants the City of Philadelphia Police Department, Former Commissioner Willie Williams, Lt. Pickard, Lt. Kenner, and Sgt. Campanna. Plaintiff alleged that she was fired from the Philadelphia Police Department as a result of false accusations related to the incident on March 4, 1990. Plaintiff's complaint was dismissed with prejudice on February 27, 1995 for failure to state a claim.

Under the doctrine of res judicata, a plaintiff's claims will be barred if: (1) the earlier judgment is final and on the merits; (2) the claims asserted by the plaintiff are the same as those asserted in the earlier action; and, (3) the parties are the same as, or in privity with, the parties from the earlier action. Huck on Behalf of Sea Air Shuttle Corp. v. Dawson, 106 F.3d 45, 48 (3d Cir. 1997). Res judicata precludes a party both from relitigating matters already litigated and decided and from litigating matters that have never been litigated, yet should have been advanced in an earlier suit. Id. at 49. In the present case, the doctrine of res judicata applies as a bar to Plaintiff's claims against Defendants City of Philadelphia Police Department, Former Commissioner Willie Williams, Lt. Pickard, Lt. Kenner and Sgt. Campanna because the earlier claims were dismissed on the merits, the claims asserted by the plaintiff are the same as those asserted in the earlier action<sup>2</sup> and the parties are the same. Therefore, Plaintiff's claims against Defendants City of Philadelphia Police Department, Former Commissioner Willie Williams, Lt.

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<sup>2</sup> In Plaintiff's complaint in civil action 93-422, Plaintiff does not specifically set forth her claims except to allege a violation of her civil rights; but in civil action 97-6711, Plaintiff does specifically state the claims she is advancing. The allegations in both complaints, however, arise from the same set of facts relating to the incident on March 4, 1990 and the termination of Plaintiff's employment. Therefore, even where plaintiff did not explicitly set forth her claims in 93-422, the claims set forth in 97-6711 are still barred because they were either implicitly raised or should have been raised in the earlier suit.

Pickard, Lt. Kenner and Sgt. Campanna will be dismissed with prejudice.

The only defendant who was not named in the complaint in civil action 93-422 is Defendant Tucker. With respect to Defendant Tucker, Plaintiff alleges that Defendant Tucker altered documents and gave orders relating to the incident on March 4, 1990 that interfered with justice being served. Further, Plaintiff alleges that Defendant Tucker made slanderous remarks about Plaintiff which caused Plaintiff to lose her position with the City of Philadelphia Police Department.

Defendants argue that Plaintiff's claims are barred by the statute of limitations. In actions brought pursuant to § 1983, federal courts apply the state personal injury statute of limitations. Wilson v. Garcia, 471 U.S. 261, 276-80 (1985). The Pennsylvania statute of limitations for personal injury actions is two years. 42 Pa. Cons. Stat. Ann. § 5524. The Pennsylvania statute of limitations for defamation is one year. Id. at § 5523. Any claims against Defendant Tucker which relate to the incident on March 4, 1990 happened over eight years ago and are, therefore, barred by the two-year statute of limitations for actions brought under § 1983.

Although Plaintiff's Complaint does not specifically identify which, if any, claims are being brought pursuant to state law, to the extent Plaintiff has raised a state-law claim against Defendant Tucker for slander, Pennsylvania's one-year statute of limitations for claims of defamation also acts as a bar to Plaintiff's state-law claim.<sup>3</sup> Therefore, this court will exercise supplemental jurisdiction over any state law claim Plaintiff has brought against Defendant

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<sup>3</sup> Plaintiff does not state when Defendant allegedly made the slanderous remarks, but she does allege that her employment was terminated as a result of said remarks. Therefore, the remarks had to have been made before her employment was terminated, and Plaintiff's employment was terminated on October 21, 1991. (Defs.' Ex. B at 4.) Thus, Plaintiff's claim for defamation is well beyond the applicable statute of limitations.

Tucker for defamation and will dismiss said claim with prejudice. Any claims Plaintiff has made against Defendant Tucker pursuant to § 1983 will also be dismissed with prejudice.

An appropriate Order follows.

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LT. KENNER, SGT. T. CAMPANNA,	:	
SGT. ROBERT TUCKER	:	
Defendants.	:	

**ORDER**

AND NOW, this            day of August, 1998, upon consideration of Defendants’ unopposed Motion for Judgment on the Pleadings pursuant to Rule 12(c), IT IS HEREBY ORDERED that Defendants’ Motion is GRANTED, and Plaintiff’s claims against all Defendants are DISMISSED WITH PREJUDICE.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.