

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

JEFFREY MARTIN

v.

**BRENDA J. BICKING;
KEN HOPTON; and
MR. SWIGER**

CIVIL ACTION

NO. 98-5739

MEMORANDUM

Broderick, J.

September , 1999

Plaintiff Jeffrey Martin brought this civil rights action, through counsel, under 42 U.S.C. § 1983 against Brenda Bicking ("Bicking"), the presiding district justice for Magisterial District 15-1-03 in Coatesville, Chester County, Pennsylvania, and two constables, Ken Hopton ("Hopton") and Gary Swiger ("Swiger"). This Court dismissed Bicking from the case by Order dated December 10, 1999 on the basis of her judicial immunity.

Plaintiff's complaint, although it does not contain separate counts, purports to bring claims for "false arrest, unlawful seizure and search of the person, false imprisonment, and malicious prosecution" against all defendants. Plaintiff's claims arise out of a series of summary offenses in Chester County which led to his arrest in 1995 and 1996 and his imprisonment for 27 days in 1996. Plaintiff alleges that he was denied due process in the resolution of these charges. Plaintiff also claims that, during the course of the proceedings against him, the defendants became aware that he was not the Jeffrey Martin named in at least one of the charges. Plaintiff seeks compensatory and punitive damages, as well as an award of costs and attorney's fees.

Presently before the Court are separate motions brought by Defendants Hopton and Swiger for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff has filed a consolidated response to these motions. For the reasons stated below, the motions of Defendants Hopton and Swiger for summary judgment will be granted.

In order to prevail on a summary judgment motion, the moving party must show from the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-movant. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The Court must accept the non-movant's version of the facts as true, and resolve conflicts in the non-movant's favor. Big Apple BMW, Inc. v. BMW of North American, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993).

A disputed factual matter is a genuine issue "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is material if it might affect the outcome of the lawsuit under the governing substantive law. Id.

Once the moving party establishes "that there is an absence of evidence to support the non-moving party's case," Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986), the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. The non-moving party may not rely on bare assertions,

conclusory allegations or suspicions. Fireman's Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982). Neither may the non-moving party rest on the allegations in the pleadings. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Rather, the non-movant must then "make a showing sufficient to establish the existence of every element essential to his case, based on the affidavits or by the depositions and admissions on file." Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992).

Defendants argue that they are entitled to summary judgment on two grounds. First, Defendants argue that all of Plaintiff's claims against them are barred by the statute of limitations. Additionally, Defendants argue that they are entitled to summary judgment on the basis of the qualified immunity they enjoy as constables in the performance of their duties.

In Wilson v. Garcia, 471 U.S. 261 (1985), the Supreme Court held that the statute of limitations period for claims under § 1983 is equivalent to the period provided under state law for personal injury claims. Under Pennsylvania law, the statute of limitations for personal injury claims is two years. 42 Pa.C.S.A. § 5534 (1982). Section 5534 provides in relevant part: "The following actions and proceedings must be commenced within two years: (1) An action for assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process...."

The limitations period for claims of false arrest begins to run at the time the plaintiff was arrested because "on that date a plaintiff would have reason to know of the injury." Rose v. Bartle, 871 F.2d 331, 350 (3d Cir. 1989). Similarly, claims of false imprisonment accrue on the date on which the plaintiff discovers or reasonably should have discovered that he was falsely imprisoned. Sandutch v. Muroski, 684 F.2d 252, 253-54 (3d Cir. 1982). For claims of malicious

prosecution, however, the statute of limitations begins to run at the time the criminal proceedings against Plaintiff were terminated in his favor. Rose, 871 F.2d at 348-49.

In support of his motion, Defendant Hopton has come forward with an affidavit which sets forth the following facts: Constable Hopton arrested Jeffrey Martin in 1995 on the basis of a facially valid summary warrant for bad checks. Constable Hopton and Constable Swiger took Plaintiff before Defendant Bicking. Plaintiff claimed that he was not the Jeffrey Martin identified on the summary warrant. Mr. Martin entered a plea of not guilty to the bad check charges and a hearing was scheduled, after which Mr. Martin was released. Mr. Martin did not appear for the scheduled hearing. Constable Hopton arrested Plaintiff on October 7, 1996 on a summary warrant for failing to appear at his scheduled hearing and/or his failure to make payments on the 1995 summary warrant. Constable Hopton took Mr. Martin before Defendant Bicking. Defendant Bicking ordered Mr. Martin incarcerated.

Defendants Hopton and Swiger, in support of their motions, each attach copies of Plaintiff's complaint. The complaint contains a copy of the Order of October 7, 1996 committing Plaintiff to custody for a period of 27 days until November 3, 1996. This Order lists five charges against Plaintiff. Defendant Swiger's motion contains no accompanying affidavit.

In response to Defendants' motions, Plaintiff filed, through counsel, a response which contains no affidavits, depositions, answers to interrogatories or any other evidence. Rather, Plaintiff's response merely contains several pages of rambling argument and a call to "take arms against this system and alter or abolish it." Pl's response at 6. Since Plaintiff has not come forward with even a scintilla of evidence on any issue in this action, the Court will accept as undisputed the Defendants' evidence.

The two year statute of limitations period for Plaintiff's claims of false arrest and false imprisonment initially began to run against Defendant Hopton at the time of Plaintiff's arrest by Hopton in 1995. Plaintiff's complaint was not filed until October 29, 1998. Therefore, Plaintiff's false arrest and false imprisonment claims against Defendant Hopton based on his 1995 arrest are barred by the statute of limitations and Defendant Hopton is entitled to judgment as a matter of law on those claims. Similarly, as to Defendant's second arrest by Defendant Hopton, the statute of limitations began to run at the time of Plaintiff's arrest on October 7, 1996. Therefore, Plaintiff's false arrest and false imprisonment claims against Defendant Hopton arising out of his October, 1996 arrest are also barred by the statute of limitation and Defendant Hopton is entitled to judgment as a matter of law on those claims.

The two year statute of limitations on Plaintiff's claims of false arrest and false imprisonment began to run against Defendant Swiger at the time of Plaintiff's arrest by Hopton and Swiger in 1995. There is no evidence in the record provided to this Court to suggest that Swiger was involved in Plaintiff's 1996 arrest and Plaintiff's complaint does not even make such an allegation. Therefore, Plaintiff's false arrest and false imprisonment claims against Defendant Swiger are barred by the statute of limitations and Defendant Swiger is entitled to judgment as a matter of law on those claims.

Under § 1983 and Pennsylvania law, a Plaintiff bringing a malicious prosecution claim must establish that "(1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in the plaintiff's favor; (3) the proceeding was initiated without probable cause; and (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice." Hilferty v. Shipman, 91 F.3d 573, 579 (3d Cir. 1996). Plaintiff has failed to bring forth

evidence of any of the required elements of a malicious prosecution claim against Defendants Hopton and Swiger. In fact, Plaintiff's complaint, even if it were sufficient for Plaintiff to rest on the allegations of his complaint, fails to even allege the elements of a malicious prosecution claim against Defendants Hopton and Swiger. Therefore, Defendants Hopton and Swiger are entitled to judgment as a matter of law on Plaintiff's malicious prosecution claim.

Finally, Plaintiff's complaint makes no specific allegations of either a search or seizure of his person by either Defendant Hopton or Swiger and Plaintiff has brought forth no evidence of either a search or seizure by either Defendant Hopton or Swiger. Even if this Court found Plaintiff's mere allegation that he was arrested on a warrant by Defendants Hopton and Swiger in 1995 and arrested on a warrant again by Defendant Hopton in October, 1996 sufficient to state a claim under the Fourth Amendment for a unconstitutional seizure, Plaintiff's claims would still be barred by the applicable statute of limitations because Plaintiff's complaint was filed more than two years after both arrests. See Torres v. McLaughlin, 163 F.3d 169, 174 (3d Cir. 1998) (holding that post-conviction incarceration is not a seizure under the Fourth Amendment). Therefore, Defendants Hopton and Swiger are entitled to judgment as a matter of law on Plaintiff's claim for "unlawful seizure and search of the person."

Having found that Defendants Hopton and Swiger are entitled to judgment as a matter of law on Plaintiff's claims for false arrest and false imprisonment on the basis of the statute of limitations and having also found that Defendants Hopton and Swiger are entitled to judgment as a matter of law on Plaintiff's claims for malicious prosecution and "unlawful seizure and search of the person" on the basis that Plaintiff has failed to either plead or prove any of the essential elements of such claims, the Court need not address Defendants' additional contention that they

are entitled to summary judgment on the basis of qualified immunity.

For the foregoing reasons, the Court finds that there are no genuine issues of material fact and Defendants Hopton and Swiger are entitled to judgment as a matter of law on all Plaintiff's claims. Therefore, the motions of Defendants Hopton and Swiger for summary judgment pursuant to Federal Rule of Civil Procedure 56 will be granted.

An appropriate Order follows.

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ORDER

AND NOW, this day of September, 1999; Defendants Gary Swiger and Ken Hopton having filed separate motions for summary judgment and Plaintiff Jeffrey Martin having filed a consolidated response thereto; for the reasons stated in this Court's Memorandum of this same date, the Court having determined that Plaintiff has not met his burden of demonstrating that there are genuine issues of material fact and Defendants therefore are entitled to judgment as a matter of law;

IT IS ORDERED that Defendant Constable Gary Swiger's Motion for Summary Judgment (Document No. 15) is **GRANTED**;

IT IS FURTHER ORDERED that Defendant Constable Kenneth Hopton's Motion for Summary Judgment (Document No. 14) is **GRANTED**.

RAYMOND J. BRODERICK, J.