

AMENDED ALD-096

April 7, 2021

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **20-2984**

JAMES E. NOTTINGHAM, Appellant

VS.

LAUREL HARRY, ET AL.

(M.D. Pa. Civ. No. 4-19-cv-00595)

Present: MCKEE, GREENAWAY, JR. and BIBAS, Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) By the Clerk for possible dismissal under 28 U.S.C. § 1915(e)(2)(B) or for summary action under 3rd Cir. LAR 27.4 and I.O.P. 10.6;
- (3) Appellant's response to first letter advising of dismissal;
- (4) Appellant's response to second letter advising of dismissal;
- (5) Appellant's first Motion for Default Judgment;
- (6) Appellant's second Motion for Default Judgment;
- (7) Appellant's Motion to Investigate High Crimes and Arrest;
- (8) Appellant's Motion for Judgment on the Pleadings under Rule 12;
- (9) Appellant's Motion for Summary Judgment Rule 56; and
- (10) Appellant's third Motion for Default Judgment

in the above-captioned case.

Respectfully,
Clerk

(Continued)

JAMES E. NOTTINGHAM, Appellant

VS.

LAUREL HARRY, ET AL.

C.A. No. 20-2984

Page 2

ORDER

The appeal is dismissed for lack of appellate jurisdiction because the notice of appeal was not timely filed. A notice of appeal in a civil case in which the United States is not a party must be filed “within 30 days after the judgment or order appealed from is entered.” Fed. R. App. P. 4(a)(1)(A). This time limit is “mandatory and jurisdictional.” Bowles v. Russell, 551 U.S. 205, 209 (2007). The District Court entered its judgment dismissing Nottingham’s complaint on July 6, 2020, and its order denying Nottingham’s timely motions for reconsideration on August 21, 2020. Nottingham filed his notice of appeal at the earliest on September 22, 2020, see Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988), one day after the expiration of the 30-day period to appeal the denial of those motions. Nottingham did not seek to extend or reopen the time to file an appeal pursuant to Federal Rule of Appellate Procedure 4(a)(5) or 4(a)(6) in the District Court, nor can his notice of appeal or any other document be construed as a motion under either rule. See Poole v. Family Ct. of New Castle Cnty., 368 F.3d 263, 268 (3d Cir. 2004). In light of our disposition, we do not reach the question of whether we should dismiss the appeal under 28 U.S.C. § 1915(e)(2)(B) or take summary action. Nottingham’s remaining motions are denied as moot.

By the Court,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: April 9, 2021
SLC/cc: James E. Nottingham
Sean A. Kirkpatrick, Esq.



A True Copy:

Patricia S. Dodsweat

Patricia S. Dodsweat, Clerk
Certified Order Issued in Lieu of Mandate

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

21400 UNITED STATES COURTHOUSE
601 MARKET STREET

PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

TELEPHONE

215-597-2995

April 9, 2021

Sean A. Kirkpatrick
Office of Attorney General of Pennsylvania
Strawberry Square
Harrisburg, PA 17120

James E. Nottingham
Camp Hill SCI
P.O. Box 8837
2500 Lisburn Road
Camp Hill, PA 17001

RE: James Nottingham v. Laurel Harry, et al

Case Number: 20-2984

District Court Case Number: 4-19-cv-00595

ENTRY OF JUDGMENT

Today, **April 09, 2021** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

s/ Patricia S. Dodszuweit

Clerk

By: s/ Shannon, Case Manager
267-299-4959

cc: Mr. Peter J. Welsh

JAMES E. NOTTINGHAM, Plaintiff, v. JASON COOLEY, et al., Defendants.
UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
2020 U.S. Dist. LEXIS 117498
CIVIL ACTION NO. 4:19-CV-00595
July 6, 2020, Decided
July 6, 2020, Filed

Editorial Information: Prior History

Nottingham v. Harry, 2019 U.S. Dist. LEXIS 136533, 2019 WL 7596893 (M.D. Pa., Aug. 12, 2019)

Counsel {2020 U.S. Dist. LEXIS 1}James E. Nottingham, Plaintiff, Pro se, Camp Hill, PA.

Judges: KAROLINE MEHALCHICK, United States Magistrate Judge.

Opinion

Opinion by: KAROLINE MEHALCHICK

Opinion

MEMORANDUM OPINION

Plaintiff James E. Nottingham brings this civil rights action, pursuant to 42 U.S.C. § 1983, asserting claims against Jason Cooley and Blake Brown ("Defendants"), both troopers with the Pennsylvania State Police. (Doc. 1, at 3). Nottingham alleges that Cooley and Brown used excessive force in effectuating Nottingham's arrest. (Doc. 1, at 10-18). Presently before the Court are three motions: (1) Nottingham's Motion for Summary Judgment; (2) Nottingham's Motion for Default Judgment; and (3) Defendants' Motion to Dismiss. (Doc. 33; Doc. 39; Doc. 37).

For the reasons that follow, Defendants' Motion to Dismiss shall be granted, rendering Nottingham's motions moot.

I. Background

Nottingham's allegations against Defendants Cooley and Brown arise from an alleged physical altercation between Nottingham and two of his houseguests after he decided to show them a firearm he owned. (Doc. 1, at 4-9). After the altercation, Defendants were called to Nottingham's home, where Nottingham greeted them outside. (Doc. 1, at 10). After being told there were others in the home, Defendants {2020 U.S. Dist. LEXIS 2} restrained Nottingham and Defendant Cooley entered the home for one to two minutes. (Doc. 1, at 11). Upon exiting the home, Cooley allegedly "ran down the driveway, jumped on top of me, his knee implanted into my chest as he punched me a couple of times as Brown held the cuffs enabling me of any movement." (Doc. 1, at 11). After digging his "jagged" thump into Nottingham's wrist, Nottingham "told officer Cooley, my friend was in the woods and a red dot was on his neck, to get him to stop inflicting excruciating pain on me." (Doc. 1, at 12). Defendants then transported Nottingham to the Montoursville State Police Station where, while Nottingham was handcuffed, they both allegedly tackled Nottingham, strangled him until he was unconscious, attempted to pull his finger nail off of his finger, and applied handcuffs too tightly. (Doc. 1, at 13-18).

lyccases

1

© 2021 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

"B"

Based on these allegations, this Court determined that Nottingham sufficiently alleged an excessive force claim against Defendants. (Doc. 22, at 22). Excessive force claims arising out of an arrest are analyzed under the Fourth Amendment. See *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). Defendants filed their Motion to Dismiss and Brief in Support on December 19, 2019, with Nottingham filing his Brief{2020 U.S. Dist. LEXIS 3} in Opposition on January 10, 2020. (Doc. 37; Doc. 38; Doc. 42).

II. Discussion

A. Legal Standards

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a defendant to move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The United States Court of Appeals for the Third Circuit has noted the evolving standards governing pleading practice in federal court, stating:

Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), continuing with our opinion in *Phillips [v. Cnty of Allegheny*, 515 F.3d 224 (3d Cir. 2008)] and culminating recently with the Supreme Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In deciding a Rule 12(b)(6) motion, the court may consider the facts alleged on the face of the complaint, as well as "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S. Ct. 2499, 168 L. Ed. 2d 179 (2007). In order to state a valid cause of action, a plaintiff must provide some factual ground for relief which "requires more than labels and conclusions, and a formulaic recitation of the{2020 U.S. Dist. LEXIS 4} elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A trial court must assess whether a complaint states facts upon which relief can be granted, and should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). "[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. A court "need not credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). Additionally, a court need not assume that a plaintiff can prove facts that the plaintiff has not alleged. *Associated Gen. Contractors of Cal. v. California State Council of Carpenters*, 459 U.S. 519, 526, 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983). When it comes to the factual grounds, however, a court must accept as true all allegations in the complaint, and any reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994).

In addition to these pleading rules, a civil complaint must comply with the requirements of Rule 8(a) of the Federal Rules of Civil Procedure, which defines what a complaint should contain:

- (a) A pleading that states a claim for relief must contain (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no{2020 U.S. Dist. LEXIS 5} new jurisdictional support; (2) a short and plain statement of the

claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief. Thus, a *pro se* plaintiff's well-pleaded complaint must recite factual allegations which are sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action. Indeed, Fed. R. Civ. P. 8(a) requires a "showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the...claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93-94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007); *Phillips*, 515 F.3d at 233 (citing *Twombly*, 550 U.S. at 545).

With the aforementioned standards in mind, a document filed *pro se* is "to be liberally construed." *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). A *pro se* complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim 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. *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972). Further, the Third Circuit has instructed that if a complaint is vulnerable to dismissal for failure{2020 U.S. Dist. LEXIS 6} to state a claim, the district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002).

B. The Statute of Limitations Bars Nottingham's Claims

Defendants now submit that **Nottingham** did not file his claims within the time afforded by the relevant statute of limitations, so they should be dismissed. (Doc. 38, at 4-5). Federal courts apply the state personal injury statute of limitations in § 1983 actions. See *Owens v. Okure*, 488 U.S. 235, 250, 109 S. Ct. 573, 102 L. Ed. 2d 594 (1989); *Wilson v. Garcia*, 471 U.S. 261, 276-80, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985). As relevant here, Pennsylvania's statute of limitations for personal injury actions is two years. 42 Pa. C.S.A. § 5524; *Little v. Lycoming Cty.*, 912 F. Supp. 809, 814 (M.D. Pa. 1996). The question of when a cause of action accrues, however, is a question of federal law. *Sabella v. Troutner*, 2006 U.S. Dist. LEXIS 5862, 2006 WL 229053, at *3 (M.D. Pa. 2006) (citing *Smith v. Wambaugh*, 887 F. Supp. 752, 755 (M.D. Pa. 1995) *aff'd*, 87 F.3d 108 (3d Cir. 1996)). "[U]nder federal law... 'the limitations period begins to run from the time when the plaintiff knows or has reason to know of the injury which is the basis of the section 1983 action.'" *Montgomery v. De Simone*, 159 F.3d 120, 126 (3d Cir. 1998) (quoting *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 919 (3d Cir. 1991)).

According to Nottingham's Complaint, he and his houseguests arrived at his residence at 12:27 AM on July 13, 2015. (Doc. 1, at 6). The subsequent altercation and incident with the Defendants occurred later that same day: July 13, 2015. (Doc. 1, at 7-18). All of Nottingham's alleged injuries were inflicted on July 13, 2015. (Doc. 1, at 7-18). As such, the limitations{2020 U.S. Dist. LEXIS 7} period began to run on July 13, 2015. See *Montgomery*, 159 F.3d at 126.2 **Nottingham** filed his initial complaint arising from the injuries inflicted by Defendants on April 5, 2019. (Doc. 1). The time between July 13, 2015, and April 5, 2019, is three years, eight months, and twenty-three days. Because **Nottingham** waited more than two years to file this action, Pennsylvania's statute of limitations bars his claims. 42 Pa. C.S.A. § 5524; see *Owens*, 488 U.S. at 250.3

III. Conclusion

For the foregoing reasons, Defendants' Motion to Dismiss is GRANTED. (Doc. 37). Plaintiff's Motion for Summary Judgment and his Motion for Default Judgment are DENIED AS MOOT. (Doc. 33; Doc. 39).

An appropriate Order will follow.

Dated: July 6, 2020

/s/ **Karoline Mehalchick**

KAROLINE MEHALCHICK

United States Magistrate Judge

Footnotes

1

The Court notes that Nottingham's Proposed Amended Complaint filed on September 16, 2019, has been dismissed as moot. (Doc. 28, at 4). Nottingham's original Complaint filed on April 5, 2019, remains effective. (Doc. 1). On October 3, 2019, all claims were dismissed except those against Defendants Cooley and Brown. (Doc. 28). As such, this memorandum addresses only Nottingham's allegations against Cooley and Brown.

2

Nottingham asserts that the limitations period was to begin on September 11, 2018, which is the date his appeal of his criminal charges was decided. (Doc. 42, at 1) citing (Doc. 38-1, at 2). As discussed *supra*, the limitations period began when Nottingham knew or had reason to know of the injury forming the basis of his Complaint against Defendants Cooley and Brown. See *Montgomery*, 159 F.3d at 126.

3

Because Nottingham's claims are barred by the statute of limitations, all remaining motions will be dismissed as moot.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2984

JAMES E. NOTTINGHAM,
Appellant

v.

LAUREL HARRY, ET AL.

On Appeal from the District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 4-19-cv-00595)
District Judge: Honorable Karoline Mehalchick

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, and PHIPPS, *Circuit Judges*.

The petition for rehearing filed by Appellant in the above-entitled case having
been submitted to the judges who participated in the decision of this Court and to all the
other available circuit judges of the circuit in regular active service, and no judge who
concurred in the decision having asked for rehearing, and a majority of the judges of the
circuit in regular service not having voted for rehearing, the petition for rehearing by the
panel and the Court en banc, is denied.

'A'

BY THE COURT,

s/ Joseph A. Greenaway, Jr.
Circuit Judge

Dated: May 11, 2021
Tmm/cc: James E. Nottingham
Sean A. Kirkpatrick, Esq.

**Additional material
from this filing is
available in the
Clerk's Office.**