

BLD-112

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 23-1052

DOUGLAS MANNING, Appellant

VS.

SGT. ST. PAUL; ET AL.

(D.N.J. Civ. No. 2-20-cv-14240)

Present: KRAUSE, PORTER, and MONTGOMERY-REEVES, Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
 - (2) Appellant's pro se informal brief, construed as a document in support of the appeal;
 - (3) Appellant's second pro se informal brief, construed as a document in Support of the appeal; and
 - (4) Appellant's letter to the Court
- in the above-captioned case.

Respectfully,

Clerk

ORDER

The District Court's November 17, 2022 order dismissed Appellant's second amended complaint without prejudice to the filing of a motion to reopen within thirty days. Appellant filed a motion to reopen in that timeframe. The appeal is thus dismissed for lack of appellate jurisdiction, as there is no "final," immediately appealable order under 28 U.S.C. § 1291. See WRS, Inc. v. Plaza Entm't, Inc., 402 F.3d 424, 427 (3d Cir. 2005); Borelli v. City of Reading, 532 F.2d 950, 951 (3d Cir. 1976) (per curiam).

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By the Court,

s/ Cheryl Ann Krause
Circuit Judge

Dated: April 3, 2023
Tmm/cc: Douglas Manning



A True Copy:

Patricia S. Dodszeit

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

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DOUGLAS MANNING,

Plaintiff,

v.

ST. PAUL, et al.,

Defendants.

Civil Action No. 20-14240 (MCA)

MEMORANDUM & ORDER

Plaintiff Douglass Manning ("Plaintiff") is currently incarcerated at East Jersey State Prison. He is proceeding *pro se* with an Amended Complaint and a Second Amended Complaint brought pursuant to 42 U.S.C. § 1983 and the New Jersey Civil Rights Act ("NJCR"). See ECF Nos. 6, 11. Plaintiff also seeks leave to bring a Third Amended Complaint. See ECF No. 13. It appearing that:

In his Original Complaint, Plaintiff alleged that he was assaulted on December 3, 2007, by several correctional officers at Northern State Prison in Newark, New Jersey. Plaintiff named Correction Sergeant St. Paul, Senior Correction Officer Rivera, and Senior Correction Officer Santiago as Defendants.

Plaintiff submitted his Original Complaint for filing on September 9, 2020, more than 12 years after the alleged assault. See ECF No. 1. The Court screened the Original Complaint under 28 U.S.C. § 1915A(b). The Court construed the Original Complaint to allege that Defendants used excessive force in violation of the Eighth Amendment and determined that it was obvious from the face of the Original Complaint that Plaintiff's federal claims were time-barred under the two-year limitations period for civil rights claims. The Court therefore dismissed the Original Complaint *sua sponte* under 28 U.S.C. § 1915A(b) for failure to state a claim. See ECF No. 5.

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The Court noted that that Plaintiff failed to articulate any basis for equitable tolling but provided Plaintiff leave to submit an Amended Complaint if he could provide facts to support equitable tolling. Plaintiff subsequently filed what appears to be a handwritten Amended Complaint along with a request for an extension of time to submit an Amended Complaint. *See* ECF Nos. 6-7. Plaintiff subsequently submitted a Second Amended Complaint on the prisoner form, and the Magistrate Judge issued an Order accepting Plaintiff's Second Amended Complaint as within time and directing the Second Amended Complaint to be filed. *See* ECF Nos. 10-11.

The First Amended Complaint, ECF No. 6, consists of twenty handwritten pages and is difficult to construe. Plaintiff lists numerous constitutional provisions and legal boilerplate, realleges that he was assaulted on December 3, 2007, *see* Amended Compl. at 1-5, and appears to quote at length from his medical providers' treatment and physical therapy notes. The treatment and physical therapy notes appear to document Plaintiff's injuries and the treatment provided from approximately December 2007-May 2008. *See id.* at 5-15. Plaintiff may be attempting to bring claims for inadequate medical care during this timeframe, but it is unclear. The treatment notes from the 2007-2008 timeframe also mention in passing that Plaintiff has a history of mental illness and noncompliance with his psychiatric medication. *See e.g.*, Amended Complaint at 8. The remaining portions of the Amended Complaint are difficult to follow, but Plaintiff may be attempting to allege that his injuries and history of mental illness are bases for equitable tolling. *See* Am. Compl. at 15-20.

The Second Amended Complaint adds additional Defendants who were allegedly involved in the December 3, 2007 assault and appears to seek relief under § 1983 and the NJCRA, which is New Jersey's corollary to § 1983. Plaintiff provides no facts in support of equitable tolling in the Second Amended Complaint.

The Court first addresses timeliness. In determining the statute of limitations for a claim arising under 42 U.S.C. § 1983, courts apply the limitations period applicable to personal-injury torts in the state in which the cause of action arose. *Wallace v. Kato*, 549 U.S. 384, 387 (2007). Plaintiff's claims arose in New Jersey, where personal injury claims are governed by a two-year statute of limitations. *Estate of Lagano v. Bergen Cty. Prosecutor's Office*, 769 F.3d 850, 859 (3d Cir. 2014) (citing N.J.S.A. 2A:14-2). In the Second Amended Complaint, Plaintiff also seeks to bring claims under the NJCRA, N.J.S.A. 10:6-1 et seq., which are also governed by a two-year statute of limitations. *Melendez-Spencer v. Shack*, 747 F. App'x 910, 913 (3d Cir. 2018)(per curiam).

"[T]he accrual date of a § 1983 cause of action is a question of federal law that is not resolved by reference to state law." *Wallace*, 549 U.S. at 388. Under federal law, a claim accrues when the plaintiff has a complete cause of action, in other words "when 'the plaintiff can file suit and obtain relief.'" *Id.* (quoting *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., Inc.*, 522 U.S. 192, 201 (1997)).

Here, it is clear from the face of both the Amended and Second Amended Complaints that Plaintiff's Eighth Amendment claims are time barred because the use excessive force occurred in December 2007, and any potentially inadequate medical care occurred in the December 2007-May 2008 timeframe.

Plaintiff also fails to provide sufficient well-pleaded facts to support equitable tolling in either the Amended or Second Amended Complaint. It is unclear if Plaintiff is attempting to assert insanity as a basis for equitable tolling; if so, he does not provide sufficient facts to plausibly suggest that the insanity exception applies. In *Todish v. Cigna Corp.*, the Supreme Court of New Jersey held that to be considered insane within the insanity exception to the statutory time bar, *see*

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N.J.S.A. 2A:14-21a, plaintiff must suffer from “such a condition of mental derangement as actually prevents the sufferer from understanding his legal rights or instituting legal action.” 206 F.3d 303, 306 (3d Cir. 2000) (quoting *Kyle v. Green Acres at Verona, Inc.*, 44 N.J. 100, 113, 207 A.2d 513 (1965)). The medical notes indicate a history of mental illness and non-compliance with treatment, but there are no facts to suggest that Plaintiff was so mentally impaired that he did not understand his legal rights or that he could institute a legal action to vindicate those rights. The Amended Complaint also cites repeatedly to the general standard for equitable tolling, but Plaintiff provides no well-pleaded facts that would support equitable tolling of his excessive force or inadequate medical care claims. The Second Amended Complaint, which is technically the operative complaint, does not provide any facts in support of equitable tolling.

As the Court explained in its prior decision, New Jersey law permits “equitable tolling” where an adversary’s misconduct induced or tricked a complainant into allowing the filing deadline to pass, or where “in some extraordinary way” someone or something prevented plaintiff from asserting his rights, or where a plaintiff has timely asserted his rights through a defective pleading or in the wrong forum. *See Freeman v. New Jersey*, 788 A.2d 867, 880 (N.J. Super. Ct. App. Div. 2002). Similarly, under federal law, equitable tolling is appropriate in three general scenarios: (1) where a defendant actively misleads a plaintiff with respect to his cause of action; (2) where extraordinary circumstances prevent a plaintiff from asserting his claims; or (3) where the plaintiff asserts his claims in a timely manner but has done so in the wrong forum. *See Lake v. Arnold*, 232 F.3d 360, 370 n.9 (3d Cir. 2000). Plaintiff, however, must do more than simply reference the standards for equitable tolling or baldly allege that tolling applies. Instead, he must provide at least some facts showing that he is entitled to equitable tolling of his claims. In his Amended and Second Amended Complaints, Plaintiff does not provide any facts showing he was

tricked into allowing the filing deadline to pass, that extraordinary circumstances prevented him from filing his Complaint within the two-year limitations period, that he timely asserted his rights in the wrong forum, or any other basis for equitable tolling.

Because it is obvious that Plaintiff's § 1983 and NJCRA claims for excessive force and denial of medical care arising from the December 3, 2007 assault, are time-barred, and Plaintiff has provided insufficient facts to support equitable tolling, the Court dismisses the Amended and Second Amended Complaints without prejudice as untimely pursuant to its screening authority under 28 U.S.C. § 1915A and directs that this matter be closed. The Court will provide Plaintiff with a final opportunity to move to reopen this matter within 30 days if he can provide sufficient facts to support equitable tolling for the more than twelve-year period between the alleged violation(s) of his civil rights and his filing of this lawsuit.

Finally, on November 7, 2022, Plaintiff filed what appears to be a request to file a Third Amended Complaint seeking the restoration of good time credits, which would result in his immediate release from prison. *See* ECF No. 13. Plaintiff's challenge to the loss of good time credits appears unrelated to the excessive force and medical care claims he has brought in this action. Moreover, a habeas corpus petition is the proper mechanism for a prisoner to challenge the "fact or duration" of his confinement, *Preiser v. Rodriguez*, 411 U.S. 475, 498–99 (1973), including challenges to prison disciplinary proceedings that affect the length of confinement, such as deprivation of good time credits, *Muhammad v. Close*, 540 U.S. 749 (2004) and *Edwards v. Balisok*, 520 U.S. 641 (1997). *See also* *Wilkinson v. Dotson*, 544 U.S. 74 (2005). "[A]n action for restoration of good-time credits in effect demands immediate release or a shorter period of detention" and "attacks the very duration of ... physical confinement." *Wilkinson*, 544 U.S. at 79 (internal quotation marks omitted). As such, an action for restoration of good-time credits "lies at

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the core of habeas corpus” and may not be brought as a civil rights action. *Id.* (internal quotation marks omitted). For these reasons, leave to amend to bring new civil rights claims regarding the loss of good time credits in this action is denied without prejudice to Plaintiff’s filing of a habeas petition pursuant to 28 U.S.C. § 2254 after he exhausts his administrative remedies.

IT IS, THEREFORE, on this 17th day of November 2022,

ORDERED that the Clerk of the Court shall mark this matter as **OPEN**; and it is further

ORDERED that the Court has screened Plaintiff’s Amended Complaint and Second Amended Complaint for dismissal under 28 U.S.C. § 1915A; and it is further

ORDERED that it is apparent from the face of Plaintiff’s Amended Complaint and Second Amended Complaint that Plaintiff’s Eighth Amendment and NJCRA claims for excessive force and inadequate medical care are untimely, and Plaintiff has not provided sufficient facts to support equitable tolling; and it is further

ORDERED that the Amended Complaint and Second Amended Complaint, ECF Nos. 6, 11, are dismissed **WITHOUT PREJUDICE** as untimely under 28 U.S.C. 1915A(b); and it is further

ORDERED that Plaintiff may file a motion to reopen this matter within 30 days of the date of this Memorandum & Order if he can provide sufficient facts to warrant equitable tolling of the limitations period as explained in this Memorandum & Order; and it is further

ORDERED that if Plaintiff elects not to file a motion to reopen within 30 days, the dismissal of this action will convert automatically to a dismissal with prejudice; and it is further

ORDERED that the motion to amend to bring a Third Amended Complaint asserting unrelated civil rights claims arising from the denial of good time credits is denied **WITHOUT**

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PREJUDICE to Plaintiff's filing of a new habeas petition pursuant to 28 U.S.C. § 2254 after he exhaust his administrative remedies; and it is further

ORDERED that the Clerk of the Court shall send a copy of this Memorandum & Order to Plaintiff at the address on file and shall mark this case as **CLOSED**.



Hon. Madeline Cox Arleo,
United States District Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DOUGLAS MANNING,

Plaintiff,

v.

ST. PAUL, et al.,

Defendants.

Civil Action No. 20-14240 (MCA) (MAH)

OPINION AND ORDER

Plaintiff is currently incarcerated at East Jersey State Prison. He is proceeding *pro se* with a civil rights complaint pursuant to 42 U.S.C. § 1983. For the reasons explained herein, the Complaint is dismissed in its entirety without prejudice.

I. FACTUAL BACKGROUND

The Court will construe the factual allegations of the Complaint as true for the purpose of this Opinion. This case arises from an incident that occurred on December 3, 2007 between Plaintiff and several correctional officers at Northern State Prison in Newark, NJ. Plaintiff names Correction Sergeant St. Paul, Senior Correction Officer Rivera, and Senior Correction Officer Santiago as Defendants.

At the time of the incident, Plaintiff was incarcerated at Northern State Prison. (ECF No. 1, at 6.) On December 3, 2007, Plaintiff was scheduled to be transferred to another prison. (*Id.*) Correctional officers escorted him to a holding cell for intake screening. (*Id.*) Defendant Santiago entered the cell and pushed Plaintiff to the floor, causing a facial abrasion and contusion. (*Id.*; ECF No. 2, at 4.) When Plaintiff protested against such force, Defendant St. Paul entered the cell and began to stomp, kick, and beat Plaintiff. (ECF No. 1, at 6.) While Defendant St. Paul handcuffed Plaintiff, Defendants St. Paul and Rivera twisted Plaintiff's arms with such force that

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Plaintiff felt a bone crack in his right arm. (*Id.*) Rather than assist Plaintiff, who was crying out because of excruciating pain, Defendants repeatedly struck Plaintiff. (*Id.*)

Prison officials transported Plaintiff to St. Francis Medical Center in Trenton, NJ later that day. (*Id.*) The doctor at St. Francis performed an x-ray, which revealed that Plaintiff had a fractured bone in his right elbow. (*Id.*) Plaintiff filed the instant suit on October 16, 2020.

II. STANDARD OF REVIEW

Under the Prison Litigation Reform Act ("PLRA"), Pub. L. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (Apr. 26, 1996), district courts must review complaints in those civil actions in which a prisoner seeks redress against a governmental employee or entity. *See* 28 U.S.C. § 1915A(a). The PLRA directs district courts to *sua sponte* dismiss any claim that is frivolous, is malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b).

The legal standard for dismissing a complaint for failure to state a claim pursuant to 28 U.S.C. § 1915A is the same as that for dismissing a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *Courteau v. United States*, 287 Fed. App'x 159, 162 (3d Cir. 2008). A motion to dismiss pursuant to Rule 12(b)(6) is properly granted if, "accepting all well pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997) (quotations and citations omitted).

III. ANALYSIS

Plaintiff brings this action pursuant to 42 U.S.C. § 1983, alleging violations of his civil rights guaranteed under the United States Constitution. To succeed on a § 1983 claim, a plaintiff must allege two things: first, a violation of a right under the Constitution, and second, that a

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“person” acting under color of state law committed the violation. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Piecknick v. Pennsylvania*, 36 F.3d 1250, 1255–56 (3d Cir. 1994).

In this case, the Court construes the Complaint to allege that Defendants used excessive force in violation of the Eighth Amendment. The Eighth Amendment protects inmates from the “wanton and unnecessary infliction of pain.” *Whitley v. Albers*, 475 U.S. 312, 320 (1986). “In an excessive force claim, the central question is ‘whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.’” *Brooks v. Kyler*, 204 F.3d 102, 106 (3d Cir. 2000).

At this time, the Court need not determine whether Plaintiff has adequately pled a § 1983 claim or an Eighth Amendment violation, however, because it appears from the face of the Complaint that Plaintiff’s federal claims are time-barred. Although the running of the statute of limitations is ordinarily an affirmative defense, where that defense is obvious from the face of the complaint and no development of the record is necessary, a court may dismiss a time-barred complaint *sua sponte* under 28 U.S.C. § 1915A(b) for failure to state a claim. See *Ostuni v. Wa Wa’s Mart*, 532 F. App’x 110, 112 (3d Cir. 2013).

Section 1983 does not contain a statute of limitations period. “It is well-established that, if Congress has created a cause of action and not specified the period of time within which a claim must be asserted, a court may infer that Congress intended state limitations periods to apply and may borrow such periods and engraft them onto the federal statute.” *Burgh v. Borough Council of Montrose*, 251 F.3d 465, 471–72 (3d Cir. 2001). As such, the analogous state statutes of limitations are “binding rules of law” for actions brought under 42 U.S.C. § 1983. *Board of Regents v. Tomanio*, 446 U.S. 478, 483–84 (1980). The Third Circuit has repeatedly found that a state’s statute of limitations for personal injury actions applies to all actions brought under § 1983.

See, e.g., *Padilla v. Twp. of Cherry Hill*, 110 F. App'x 272, 276 (3d Cir. 2004). Accordingly, New Jersey's two-year statute of limitations for personal injury actions governs Plaintiff's claim under Section 1983. See N.J. Stat. § 2A:14-2.

Although courts apply state limitations periods in § 1983 cases, accrual of a cause of action under § 1983 is a question of federal law. *Albright v. Oliver*, 510 U.S. 266, 280 n.6 (1994). Generally, "the limitations period begins to run from 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).

Here, the events that gave rise to this suit occurred on December 3, 2007. (See ECF No. 1, at 6.) The limitations period began to run the same day when Defendants beat Plaintiff. (See *id.*) Plaintiff filed the instant Complaint, however, on October 16, 2020, well after the two-year statute of limitations had run its course.

Certain statutes and doctrines may allow the Court to toll the statute of limitations, but Plaintiff fails to articulate any basis for such tolling. For example, New Jersey statutes set forth certain bases for "statutory tolling." See, e.g., N.J. Stat. § 2A:14-21 (detailing tolling because of minority or insanity); N.J. Stat. § 2A:14-22 (detailing tolling because of non-residency of persons liable). New Jersey law also permits "equitable tolling" where an adversary's misconduct induced or tricked a complainant into allowing the filing deadline to pass, or where "in some extraordinary way" someone or something prevented plaintiff from asserting his rights, or where a plaintiff has timely asserted his rights through a defective pleading or in the wrong forum. See *Freeman v. New Jersey*, 788 A.2d 867, 880 (N.J. Super. Ct. App. Div. 2002). However, absent a showing of a defendant's intentional inducement or trickery, the Court should apply the doctrine of equitable

tolling sparingly and only where sound legal principles and the interest of justice demand its application. *Id.*

When state tolling rules contradict federal law or policy, in certain limited circumstances, federal courts can turn to federal tolling doctrines. *See Lake v. Arnold*, 232 F.3d 360, 370 (3d Cir. 2000). Under federal law, equitable tolling is appropriate in three general scenarios: (1) where a defendant actively misleads a plaintiff with respect to his cause of action; (2) where extraordinary circumstances prevent a plaintiff from asserting his claims; or (3) where the plaintiff asserts his claims in a timely manner but has done so in the wrong forum. *Id.* at 370 n.9.

In this case, Plaintiff fails to articulate any basis for statutory or equitable tolling. Accordingly, because it is apparent that Plaintiff's excessive force claims are time-barred, the claims are dismissed as untimely. If Plaintiff believes that he can assert facts that warrant tolling, he may move to re-open this case and to file an amended complaint stating the basis for such tolling.

IT IS, THEREFORE, on this 29th day of June, 2021,

ORDERED that Plaintiff's claims are dismissed **WITHOUT PREJUDICE** for failure to state a claim for relief pursuant to 28 U.S.C. 1915A(b); and it is further

ORDERED that Plaintiff may submit an Amended Complaint within 30 days of his receipt of the Court's Order and accompanying Opinion if he can assert facts that warrant tolling of the statute of limitations; and it is further

ORDERED that the Clerk of the Court shall send a copy of this Order and the accompanying Opinion to Plaintiff at the address on file and shall mark this case as **CLOSED**.

s/Madeline Cox Arleo
Hon. Madeline Cox Arleo
United States District Judge

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