

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

GREGORY LAMONT HUGHES,

Plaintiff

v.

JAMES FORR, ET AL.,

Defendants

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: CIVIL NO. 3:CV-03-0464
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: (Judge Kosik)
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MEMORANDUM

Gregory Lamont Hughes, an inmate currently confined at the State Correctional Institution at Graterford, Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983 on March 14, 2003. Named as defendants were eighteen (18) officials and/or employees at the State Correctional Institution at Frackville, Pennsylvania, Hughes' former place of confinement. In the complaint, Hughes set forth incidents which allegedly occurred during the time period from January 2001 through mid-May 2001. The claims included allegations of excessive force, conditions of confinement claims, retaliation, inadequate medical care, discrimination and failure to act upon grievances. On April 14, 2003, the Court issued a Memorandum and Order allowing Hughes to file an amended complaint in this action within twenty (20) days in that his complaint, as filed, failed to satisfy the requirements for permissive joinder pursuant to Federal Rule of Civil Procedure

20(a).¹ (Doc. 6.) He was advised that the failure to do so would result in the dismissal of all claims with the exception of the first count set forth in his complaint. He was further advised that if he did submit an amended complaint, but the amended complaint still violated Rule 20(a), the court would proceed on the first count in the amended complaint. Following enlargements of time, Hughes submitted an amended complaint on April 14, 2003, which is presently before the court for screening pursuant to 28 U.S.C. § 1915(e)(2). (Doc. 11.)

Background

In his original complaint, many of the claims set forth by Hughes addressed different issues and there was no indication that the claims against the defendants arose out of the same transaction, occurrence, or series of transactions or occurrences, or had a question of law or fact common to all defendants. There was no indication that the array of claims set forth by Hughes

¹ Fed. R. Civ. P. 20(a) provides as follows:

(a) Permissive Joinder. All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

shared either common law or common fact, and as such, they were found to be inappropriate for joinder under Rule 20.² A careful reading of the complaint demonstrated that the only common thread running through the claims was that the incidents all occurred while Hughes was incarcerated at SCI-Frackville. Otherwise, the claims appeared to be unrelated. Further, to allow such improper joinder would be to permit plaintiff to circumvent the filing fee requirements of the Prison Litigation Reform Act.

In the amended complaint now before the court, Hughes names sixteen (16) defendants, many of the same individuals named in the original complaint. He sets forth a host of claims including: excessive force, failure to intervene, inadequate medical care, deprivation of yard privileges, unreasonable strip searches, cruel and unusual conditions of confinement, deprivation of property, and failure to respond to grievances. With the exception of the first two claims, the remaining claims involve different defendants and do not arise out of the same transactions or occurrences, thereby violating of Fed. R. Civ. P. 20(a). As such, the court will proceed only on the first two claims set forth in the amended complaint. These claims allege the following.

Hughes contends that on January 30, 2001, defendants Onuchek, O'Day and Burke approached his cell door in the punitive segregation unit at SCI-Frackville to escort him to a meeting. He states that Onuchek entered the cell, conducted a strip search and handcuffed him behind his back. Defendant O'Day, who was hiding out of view, jumped in front of plaintiff as he

² A thorough discussion of Fed. R. Civ. P. 20(a) is set forth in this Court's Memorandum and Order of April 14, 2003, and as such, will not be reiterated herein. (Doc. 6.)

was escorted out of his cell. O'Day attempted to conduct a pat-frisk search when plaintiff stated that because he had pending charges against O'Day, he did not want O'Day to touch him. O'Day allegedly became enraged and pushed plaintiff hard back into his cell. Plaintiff, who was still cuffed behind his back, fell backwards to the floor, hitting his head on the steel leg of the bunk and the concrete floor. Plaintiff contends that as a result of O'Day's actions, he suffered severe injuries to his head, back and shoulders.

Hughes further alleges that during this incident, defendants Onuchek and Burke stood by and failed to intervene to prevent O'Day from assaulting him. He further alleges that following the incident, defendants Onuchek, O'Day and Burke left the segregation unit without any concern for his condition. Later that day, defendant Burke returned and offered to escort plaintiff to the medical department. Plaintiff refused for fear of further assault and possible retaliation.

On January 31, 2001, plaintiff states that he filed a grievance against defendant O'Day with respect to this incident. He contends, however, that the prison officials at SCI-Frackville failed to take any disciplinary action against O'Day.

On April 2, 2001, Hughes alleges that he put in a sick-call request due to the injuries suffered in the assault. Specifically, plaintiff claims that he was experiencing severe pain in his head. The following day, defendant Hock, a physician's assistant at the prison, examined plaintiff. Plaintiff alleges that Hock was deliberately indifferent to his medical needs because she only prescribed Motrin for him

On April 13, 2001, plaintiff was called to the infirmary to have his head examined by

defendant O'Conner. Plaintiff complained to O'Conner about his head pain. In response, O'Conner ordered that an x-ray be performed. Plaintiff alleges the treatment provided by O'Conner was vague and an "inappropriate diagnosis or examination to determine the severity of the serious head injury." (Doc. 11, Amended Cmpl. at 5.) Plaintiff states that he thereafter requested O'Conner to order a CAT scan, but O'Conner refused to do so. Plaintiff contends that he continues to suffer from pain in his head, blurred vision and dizziness. He seeks compensatory and punitive damages.

Standard

Section 1915(e)(2) of Title 28 of the United States Code provides:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that - (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

(Emphasis added.) Federal Rule of Civil Procedure 12(b)(6) allows a defendant, in response to a complaint, to file a motion to dismiss a claim or claims for "failure to state a claim upon which relief can be granted" Section 1915(e)(2)(B)(ii) provides this ground for summary dismissal of a complaint (before service) -- failure to state a claim under Rule 12(b)(6) principles. In Rule 12(b)(6) analysis, the court must accept the veracity of a plaintiff's factual allegations. White v. Napoleon, 897 F.2d 103, 106 (3d Cir. 1990). "The test for reviewing a 12(b)(6) motion is whether under any reasonable reading of the pleadings, plaintiff may be entitled to relief." Simon v. Cebrick, 53 F.3d

17, 19 (3d Cir. 1995).

In order to “. . . state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988); Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir.), cert. denied, 516 U.S. 858 (1995). It is well established that “[a] defendant in a civil rights action must have personal involvement in the alleged wrongs . . . Personal involvement may be shown through allegations of personal direction or actual knowledge and acquiescence.” Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988). Further, liability may not be imposed under § 1983 on the traditional standards of respondeat superior. Rode, 845 F.2d at 1207-08. Hughes’ pro se complaint must be assessed against the backdrop of these familiar principles.

Hughes’ first set of claims pertain to the alleged excessive force used by defendant O’Day, the failure to intervene by defendants Burke and Onuchek, and the SCI-Frackville prison officials’ failure to adequately respond to Hughes’ grievance with regard to these matters. All of these incidents occurred between January 30, 2001 and January 31, 2001.

In reviewing the applicability of the statute of limitations to an action filed pursuant to § 1983, a federal court must apply the appropriate state statute of limitations which governs personal injury actions. See Wilson v. Garcia, 471 U.S. 261, 276-80 (1985); Urrutia v. Harrisburg County Police Dep’t., 91 F.3d 451, 457 n.9 (3d Cir. 1996).

The United States Supreme Court clarified its decision in Wilson when it held that the

residual or general applicable state personal injury statute of limitations should be applied in § 1983 actions. See Owens v. Okure, 488 U.S. 235, 245-49 (1989); Little v. Lycoming County, 912 F. Supp. 809, 814 (M.D. Pa.), aff'd sub nom., Little v. Smith, 101 F.3d 691 (3d Cir. 1996) (Table). Pennsylvania has a personal injury statute of limitations of two years. See Fitzgerald v. Larson, 769 F.2d 160, 162 (3d Cir. 1985); Smith v. City of Pittsburgh, 764 F.2d 188, 194 (3d Cir. 1985); Little, 912 F. Supp. at 814; 42 Pa. Cons. Stat. Ann. § 5524 (Supp. 2000). However, the question of when a cause of action accrues is a question of federal law. See Smith v. Wambaugh, 887 F. Supp. 752, 755 (M.D. Pa. 1995), aff'd, 87 F.3d 108 (3d Cir. 1996). "In general, a section 1983 claim accrues when the facts which support the claim are, or should be, apparent to a person with a reasonably prudent regard for his rights and when the identity of the person or persons responsible for the alleged violation is known or reasonably should have been known to the plaintiff." Id. (citations omitted.)

This action was not commenced until March 14, 2003. The claims set forth by Hughes dealing with the alleged excessive force, failure to intervene, and failure to respond appropriately to the related grievance all occurred in January of 2001. It is clear from the complaint that Hughes was aware of the facts giving rise to these allegations at the time they each occurred.³ As such, these claims are clearly time barred.

³ "The limitations period [in action[s] alleging claims under §§ 1983 and 1985] will begin to run even if Plaintiffs do not know all of the facts necessary for their claim They need only sufficient notice to alert them of the need to begin investigating Moreover, the claim accrues upon knowledge of the actual injury, not that the injury constitutes a legal wrong." (Internal citations omitted). See Gordon v. Lowell, 95 F. Supp.2d 264, 272 (E.D. Pa. 2000).

Although this is not jurisdictional, and the statute of limitations defense may be voluntarily waived, it is certain that if this case were permitted to go forward, motions to dismiss would be filed and would have to be granted. It has been held that a district court may properly dismiss an in forma pauperis complaint under 28 U.S.C. § 1915 when it is apparent on the face of the complaint that the statute of limitations has expired. See Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995); Myers v. Vogel, 960 F.2d 750, 750-51 (8th Cir. 1992); Street v. Vose, 936 F.2d 38, 39 (1st Cir. 1991); Harmon v. Doe, Civ. No. 98-0693, slip op. at 4-6 (M.D. Pa. May 27, 1998) (Rambo, J.); Wicks v. Horn, Civ. No. 98-0171, slip op. at 3-5 (M.D. Pa. February 24, 1998) (Vanaskie, J.). Accordingly, these claims as set forth by Hughes are subject to dismissal.

Hughes also contends that defendants Hoch and O'Conner denied him adequate medical care in violation of the Eighth Amendment. While these claims are related to the alleged excessive force incident previously discussed, the medical claims themselves did not arise until April of 2001, and thus are not barred by the statute of limitations.

The fundamental principles of Eighth Amendment analysis reveal that "only 'the unnecessary and wanton infliction of pain' constitutes cruel and unusual punishment forbidden by [that Amendment]⁴." Ingraham v. Wright, 430 U.S. 651, 670 (1977)(citations omitted). Accord Whitley v. Albers, 475 U.S. 312, 319 (1986). Mere negligence or dissatisfaction with medical care does not state a constitutional claim. Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). An Eighth

⁴ The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Amendment claim exists only when there is a deliberate indifference to a serious medical need. Id.; West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978).

To establish deliberate indifference, a prison official must both know of and disregard an excessive risk to inmate health or safety. Farmer v. Brennan, 511 U.S. 825, 837 (1994); Wilson v. Seiter, 501 U.S. 294, 299 (1991). "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 511 U.S. at 837. "The question . . . is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial 'risk of serious damage to his future health.'" Id., at 843.

Under Farmer, 511 U.S. at 837, plaintiff must prove that the defendants knew that their conduct presented a substantial risk of harm to him. Where an inmate is provided with medical care and the dispute is over the adequacy of that care, an Eighth Amendment claim does not exist. Nottingham v. Peoria, 709 F.Supp. 542, 547(M.D. Pa. 1988). Disagreement among individuals as to the proper medical treatment does not support an Eighth Amendment claim. Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987).

In the instant case, each time Hughes requested medical treatment, he was seen by either defendant Hoch or defendant O'Conner. He was examined and provided Motrin for pain, and subsequent thereto, an x-ray was ordered. While Hughes may not agree with the type of medication given, or the test ordered, his mere disagreement does not state a claim under the Eighth Amendment. At best, defendants' decisions to provide Motrin and order an x-ray, as

opposed to ordering some different type of treatment, might be negligence which does not state a claim under the Eighth Amendment. Accordingly, Hughes fails to state a claim upon which relief may be granted. An appropriate Order follows.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

GREGORY LAMONT HUGHES,
Plaintiff

v.

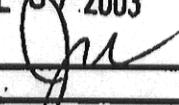
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ORDER

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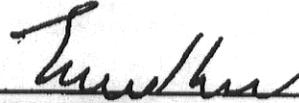
AND NOW, THIS 7th DAY OF JULY, 2003, in accordance with the

accompanying Memorandum and Order, IT IS HEREBY ORDERED AS FOLLOWS:

1. The standing complaint in this action will be the first two claims set forth by plaintiff in the amended complaint submitted on June 23, 2003 (Doc. 11.) All other claims set forth in the amended complaint are dismissed pursuant to Fed. R. Civ. P. 20(a) as more fully discussed in the attached Memorandum.

2. With regard to those claims in the amended complaint which are before the Court, said claims are dismissed as barred by the statute of limitations and pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim.

3. The Clerk of Court is directed to close this case.
4. Any appeal from this Order will be deemed frivolous, without probable cause, and not taken in good faith.



EDWIN M. KOSIK
United States District Judge

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