

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

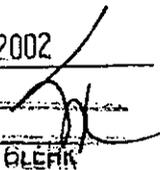
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TEPONG LOR, :  
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 Plaintiff :  
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 v. : CIVIL NO. 3:CV-02-1974  
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 DALE HICKSON, ET AL., :  
 : (Judge Conaboy)  
 :  
 Defendants :

FILED  
SCRANTON

DEC 4 2002

MEMORANDUM AND ORDER

PER   
DEPUTY CLERK

Background

Tepong Lor, an inmate presently confined at the Smithfield State Correctional Institution, Huntingdon, Pennsylvania (SCI-Smithfield), initiated this pro se civil rights complaint pursuant to 42 U.S.C. § 1983. Along with his complaint, Plaintiff has submitted an application requesting leave to proceed in forma pauperis along with his complaint.<sup>1</sup>

1. Lor completed this court's form application to proceed in forma pauperis and authorization to have funds deducted from his prison account. The court then issued an Administrative Order directing the warden of SCI-Smithfield to commence deducting the full filing fee from Plaintiff's prison trust fund account.

Based on this Court's review of the complaint, Lor's claims are barred by Pennsylvania's applicable statute of limitations. Consequently, his action will be dismissed, without prejudice, as legally frivolous pursuant to 28 U.S.C. § 1915 (e) (2) (B) (ii).

Named as Defendants are the following officials at Plaintiff's prior place of confinement, the State Correctional Institution, Waymart, Pennsylvania (SCI-Waymart): Correctional Officer Dale Hickson and Deputy Superintendent Raymond Colleran. Doc. 1, ¶ III(A). The Plaintiff is also proceeding against former SCI-Smithfield Superintendent James H. Morgan and that prison's Program Review Committee (PRC).

Lor states that he is presently serving a third degree murder sentence imposed by the Philadelphia County, Pennsylvania Court of Common Pleas. He generally asserts that the Defendants singled him out for mistreatment because of his race, custom, and small physical stature.<sup>2</sup> His complaint states that on December 29, 1997, Lor was sent to the Forensic Treatment Center at SCI-Waymart "to undergo psych treatment." Doc. 1, p. 2-A. He remained at SCI-Waymart until January 21, 1999, a total of 389 days.

Upon his arrival at SCI-Waymart, he was placed in the H/A ward where he was purportedly subjected to verbal abuse by a ward nurse. He was then "tied up with a belt strap on a walkable status

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2. Lor describes himself as being 5'4" and weighing 110 pounds.

for a few days." Id. He adds that while in the H/A ward he was physically assaulted by another inmate and was thereafter locked in a cell where he was fed medicated meals. His complaint next contends that he "was accused of something" by a nurse and correctional officer assigned to the H/A ward. Id. As a result, those officials allegedly tied Plaintiff up with a belt strap and permitted other inmates to assault him. Lor adds that he was also tied down to his bunk for a few days. His complaint next contends that during this same period of confinement in the H/A ward, Correctional Officer Hickson subjected him to excessive physical force on two separate occasions. Specifically, Lor asserts that twice within the same day, Hickson allegedly "stomped on me" while wearing heavy duty boots. Id. at p. 2-B.

Approximately eight (8) months later, Plaintiff was moved to H/B ward where he remained until his January 21, 1999 transfer to SCI-Smithfield. It is noted that the complaint raises no allegations of constitutional misconduct by either ex-Superintendent Morgan or the SCI-Smithfield PRC. On the contrary, Lor asserts claims based only on alleged unconstitutional acts which took place at SCI-Waymart. His complaint seeks injunctive relief, as well as compensatory and punitive damages.

### Discussion

28 U.S.C. § 1915 imposes obligations on prisoners who file civil actions in federal court and wish to proceed in forma pauperis. § 1915(e)(2) 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 on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

A district court may determine that process should not be issued if the complaint is malicious, presents an indisputably meritless legal theory, or is predicated on clearly baseless factual contentions. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989); Wilson v. Rackmill, 878 F.2d 772, 774 (3d Cir. 1989). Indisputably meritless legal theories are those "in which it is either readily apparent that the plaintiff's complaint lacks an arguable basis in law or that the defendants are clearly entitled to immunity from suit." Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990) (quoting Sultenfuss v. Snow, 894 F.2d 1277, 1278 (11th Cir. 1990)).

"The frivolousness determination is a discretionary one," and trial courts "are in the best position" to determine when an indigent litigant's complaint is appropriate for summary dismissal. Denton v. Hernandez, 504 U.S. 25, 112 S.Ct. 1728, 1734 (1992).

### Statute of Limitations

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. Wilson v. Garcia, 471 U.S. 261, 276 (1985); Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 457 n. 9 (3d Cir. 1996); Cito v. Bridgewater Twp. Police Dep't, 892 F.2d 23, 25 (3d Cir. 1989).

The United States Supreme Court clarified its decision in Wilson when it held that "courts considering § 1983 claims should borrow the general or residual [state] statute for personal injury actions." Owens v. Okure, 488 U.S. 235, 250 (1989); Little v. Lycoming County, 912 F. Supp. 809, 814 (M.D. Pa.), aff'd 101 F.3d 691 (3d Cir. 1996) (Table). Pennsylvania's applicable personal injury statute of limitations is two years. See 42 Pa. Cons. Stat. Ann. § 5524(7) (Purdon Supp. 1996); Kost v. Kozakiewicz, 1 F.3d 176, 190 (3d Cir. 1993); Smith v. City of Pittsburgh, 764 F.2d 188, 194 (3d Cir.), cert. denied, 474 U.S. 950 (1985). Finally, the statute of limitations "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." Gentry v. Resolution Trust Corp., 937 F.2d 899, 919 (3d Cir. 1991) (citations omitted).

Plaintiff has set forth a series of allegations which begin with his December 29, 1997 placement in SCI-Waymart and end with

his January 21, 1999 transfer to SCI-Smithfield. His instant complaint is dated October 7, 2002. See Doc. 1, ¶ V. A review of Lor's allegations establishes that he obtained knowledge of the purported violations of his constitutional rights at the time they occurred, yet he failed to initiate this action until October, 2002.

The statute of limitations is an affirmative defense which may be voluntarily waived. Nonetheless, it has been recognized that a district court may voluntarily dismiss as frivolous a complaint when it is apparent on its face that the statute of limitations has expired. See Ray v. Kertes, 285 F.3d 287, 293 n. 5 (3d Cir. 2002) (a district court has inherent power to sua sponte dismiss a complaint which facially violates a bar to suit); Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995); Miller v. Hassinger, Civil No. 02-1520, slip op. at 4 (M.D. Pa. Sept. 30, 2002) (Muir, J.); Norris v. Vaughn, Civil No. 00-1856, slip op. at 4 (M.D. Pa. Oct. 30, 2000) (Rambo, J.). Since the present complaint only raises allegations which occurred prior to October 7, 2000, it is clearly barred by Pennsylvania's controlling statute of limitations. Consequently, Plaintiff's complaint is hereby dismissed as time barred. An appropriate order will enter.

NOW, THEREFORE, THIS

4<sup>th</sup>

DAY OF DECEMBER, 2002, IT IS

HEREBY ORDERED THAT:

1. Plaintiff's complaint is dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) as being barred by the applicable statute of limitations.
2. The Clerk of Court shall close this case.
3. Any appeal taken from this order will be deemed frivolous, without probable cause, and not taken in good faith.



RICHARD P. CONABOY  
United States District Judge