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UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

TEPONG LOR, :
 :
 Plaintiff :
 :
 v. : CIVIL NO. 3:CV-02-1975
 :
 SUPERINTENDENT JAMES H.MORGAN, :
 ET AL., : (Judge Conaboy)
 :
 Defendants :

FILED
SCRANTON

NOV 27 2002

MARY E. D'ANDREA, CLERK

MEMORANDUM AND ORDER

Background

This pro se civil rights complaint pursuant to 42 U.S.C. § 1983 was filed by Tepong Lor, an inmate presently confined at the Smithfield State Correctional Institution, Huntingdon, Pennsylvania (SCI-Smithfield). Plaintiff has submitted an application requesting leave to proceed in forma pauperis along with his complaint.

With the exception of Lor's claims which occurred after October 7, 2000, his allegations are barred by Pennsylvania's

applicable statute of limitations. Consequently, those claims will be dismissed, without prejudice, as legally frivolous pursuant to 28 U.S.C. § 1915 (e) (2) (B) (ii). Since the remainder of Plaintiff's complaint is similar to claims previously asserted by Lor in an earlier § 1983 action, those timely assertions will be consolidated into the initially filed action.

Named as Defendants are the following SCI-Smithfield officials: ex-Superintendent James Morgan; Chief Psychologist Dr. R. Johns; Medical Director R. Long, M.D.; Lieutenant R. Painter; Counselor Mary Morder; Food service Manager Gary Scott; Unit Manager R.L. Heaster; Psychologist Doctor Yun; Psychiatrist Dr. Polmueller; and Academic Counselor L. Beatty. Doc. 1, ¶ III(A). The Plaintiff is also proceeding against the prison's Program Review Committee (PRC).

Plaintiff describes himself as having been singled out because of his race, custom, and small physical stature. His complaint initially asserts claims based on incidents which purportedly occurred during his September-October, 1996 placements in the SCI-Smithfield Restricted Housing Unit (RHU) and Special Needs Unit (SNU). His complaint next contends that on January 21, 1997, he was subjected to abusive language by unidentified correctional staff.

On November 8, 1997, Lor asserts that he was unjustly placed in a "P.O.C." cell. Doc. 1, p. 2-A. Shortly thereafter, on November 14, 1997, he started being fed "medicated meals." Id. at p. 2-B. Later that same month, Plaintiff was transferred to the mental health unit at the State Correctional Institution, Cresson, Pennsylvania (SCI-Cresson). On December 29, 1997, Lor was sent from SCI-Cresson to the Forensic Treatment Center at the State Correctional Institution, Waymart, Pennsylvania (SCI-Waymart). He remained at SCI-Waymart until January 21, 1999. While at that facility, Plaintiff was allegedly subjected to physical abuse by both correctional staff and other inmates.¹

The Plaintiff returned to SCI-Smithfield on January 21, 1999 and was placed in the SNU. Over the course of the next several months, Lor indicates that he underwent periods of being unjustly placed in isolation/segregated housing and was again fed medicated meals. Despite purportedly suffering from intense chest pains, Plaintiff was transferred back to SCI-Waymart on January 28, 2000. He remained there until January 18, 2001, at which time he was again returned to SCI-Smithfield and placed in the SNU. Since returning to SCI-Smithfield, Lor has purportedly been housed in segregated housing "for unknown cause" since October 17, 2001.

1. It is noted that no SCI-Waymart personnel are named as defendants in this action.

Doc. 1, ¶ IV (3). Additionally, Plaintiff generally contends that he has again been fed medicated meals. 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.² § 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

2. 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.

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 litany of events beginning with his September 11, 1996 transfer to SCI-Smithfield. His instant complaint is dated October 7, 2002. Based on the facts alleged, Lor 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.

Although the statute of limitations is an affirmative defense which may be voluntarily waived, 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.). Consequently, since a portion of the present complaint raises allegations which occurred prior to October 7,

2000, those assertions are clearly barred by Pennsylvania's controlling statute of limitations. Plaintiff's claims based on acts and events which occurred prior to October 7, 2000 are hereby dismissed as time barred.

Consolidation

Rule 42(a) of the Federal Rules of Civil Procedure states:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Fed. R. Civ. P. 42(a).

By Order dated November 19, 2002, this Court consolidated five complaints filed by Lor. See Lor v. Heaster, et al., Civil No. 3:CV-02-1971. Six (6) of the present Defendants were also named in the consolidated action: the SCI-Smithfield PRC; Dr. R. Johns; Dr. Long; Unit Manager Heaster; Doctor Polmueller; Food Service Manager Scott.

In his consolidated complaints, Plaintiff similarly describes himself as being singled out for mistreatment due to his race, customs, and small physical size. Both the consolidated action and the present complaint similarly allege that Lor has been subjected to unconstitutional treatment while in segregated housing

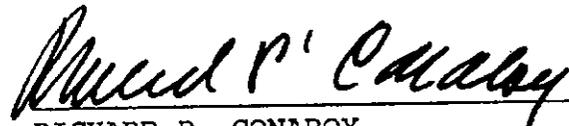
at SCI-Smithfield. Both proceedings also maintain that Plaintiff has been fed meals which had been medicated. They also similarly contend that Plaintiff was subjected to improper and excessive periods of segregated confinement. The actions similarly request injunctive relief, compensatory and punitive damages.

As demonstrated herein, the remaining portion of Plaintiff's present complaint and the consolidated action contain common factors of law and fact. Consequently, this Court will order that the remaining claims from this action be consolidated with Civil Action No.3:CV-02-1971 pursuant to Rule 42(a). An appropriate order will enter.

NOW, THEREFORE, THIS *27th* DAY OF NOVEMBER, 2002, IT IS HEREBY ORDERED THAT:

1. Plaintiff's claims based on actions and events which occurred prior to October 7, 2000 are 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 is directed to consolidate Plaintiff's remaining claims into Lor v. Heaster, et al., Civil No. 3:CV-02-1971, pursuant to Federal Rule of Civil Procedure 42(a).
3. The Clerk of Court shall close this case.

4. 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

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MARY E. D'ANDREA, CLERK
Per OT
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