

to 28 U.S.C. § 1915 (e)(2)(B)(ii) and for failure to exhaust administrative remedies as required under 42 U.S.C. § 1997e(a).

Named as Defendants are "six unknown correctional officers" at Plaintiff's prior place of confinement, the State Correctional Institution, Camp Hill, Pennsylvania (SCI-Camp Hill). Doc. 1, ¶ III(A). Lor states that he is presently serving a sentence which resulted from his conviction for third degree murder in the Philadelphia County Pennsylvania Court of Common Pleas.

Lor describes himself as having been singled out because of his race, custom, and small physical stature. His complaint asserts that on July 3, 1996, he was accused of assaulting other inmates.¹ As a result of this disciplinary charge, he was transported to the SCI-Camp Hill Restricted Housing Unit (RHU). His complaint contends that during this transfer he was subjected to excessive physical force by unidentified correctional officers. After arriving in the RHU, the alleged physical abuse continued with the guards inflicting "repeated hard blows to my head and my back and my stomach - all over" for approximately five minutes. Id. at p. 2-A. As relief, Lor seeks compensatory damages.

Discussion

28 U.S.C. § 1915 imposes obligations on prisoners who file

1. Plaintiff adds that he was later found guilty of the misconduct charge and served a sixty (60) day term of disciplinary custody.

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 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

2. Lox 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.

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 limitation 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).

In his complaint, Plaintiff clearly states that the underlying physical abuse occurred in 1996. He did not file this complaint until October, 2002. There are no facts alleged indicating that the purported excessive force was part of a continuing pattern of physical abuse. Based on the facts alleged, Lor obtained knowledge of the purported violation of his constitutional rights at the time the alleged excessive physical force occurred, yet he failed to initiate this action within the following two (2) years.

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 the present complaint, on its

face, is clearly barred by Pennsylvania's controlling statute of limitations, it will be dismissed as time barred.

Administrative Remedies

With respect to the applicability of administrative remedies, 42 U.S.C. § 1997e(a) reads as follows:

No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

This provision makes no distinction between an action for damages, injunctive relief, or both. Thus, prisoners are required to exhaust available administrative remedies prior to initiating a prison conditions case brought pursuant to 42 U.S.C. §1983 or any other federal law. Fortes v. Harding, 19 F. Supp. 2d 323, 325 (M.D. Pa. 1998)

In Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000), the United States Court of Appeals for the Third Circuit held that the exhaustion requirement is mandatory whether or not the administrative remedies afford the inmate-plaintiff the relief sought in the federal court action. The Third Circuit added that administrative remedies must be exhausted even though the prisoner

could not obtain in the administrative process the monetary relief he sought in federal court.

Furthermore, § 1997e(a)'s exhaustion requirement applies to claims not only involving actual prison conditions, but also to "all prisoner lawsuits." Porter v. Nussle, 122 S.Ct. 983, 992 (2002); Booth v. Churner, 206 F.3d 289, 298 (3d Cir. 2000), aff'd 121 S.Ct.1819 (2001). Thus, prisoners are required to exhaust available administrative remedies prior to seeking relief pursuant to § 1983 or any other federal law.

The Third Circuit has established that "failure to exhaust is an affirmative defense to be pleaded by the defendant." Ray, 285 F. 3d at 295. Thus, an inmate plaintiff need neither plead nor prove exhaustion in his complaint. Ahmed v. Dragovich, 297 F.3d 201, 209 n. 8 (3d Cir. 2002). However, as previously noted, Ray also recognized that district courts still have "inherent power to dismiss sua sponte a complaint which facially violates a bar to suit." Ray, 285 F.3d at 292 n. 5.

In his complaint, Plaintiff acknowledges that there was a formal available administrative procedure. He then further admits that he never filed a grievance regarding his present claims. Doc. 1, ¶ IV (B). The Pennsylvania Department of Corrections has a Consolidated Inmate Grievance Review System. DC-ADM 804 (effective January 1, 2001). With certain exceptions not applicable here, DC-ADM 804, Section VI ("Procedures") provides that, after attempted

informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator; an appeal from the Coordinator's decision may be made in writing to the Facility Manager or Community Corrections Regional Director; and a final written appeal may be presented to the Secretary's Office of Inmate Grievances and Appeals.

A prisoner, in seeking review through the grievance system, may include requests for "compensation or other legal relief normally available from a court." (DC-ADM 804-4, issued April 29, 1998.) Furthermore, [g]rievances must be submitted for initial review to the Facility/Regional Grievance Coordinator within fifteen (15) days after the events upon which the claims are based," but allowances of extensions of time for good cause, "will normally be granted if the events complained of would state a claim of a violation of a federal right." Id.

The DOC had an available administrative grievance procedure in place at the time Lor's claim arose. Although he was under no obligation to plead or prove satisfaction of the exhaustion requirement, in his complaint Plaintiff has admitted failure to employ the DOC's administrative remedy procedure. This acknowledged failure to satisfy § 1997e(a), which is apparent from the face of the complaint, also warrants the dismissal of his case without prejudice for failure to exhaust administrative remedies. See Ray; Ahmed v. Sromovski, 103 F. Supp. 2d 838, 843 (E.D. Pa.

