

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----  
WILLIAM FREDERICK WILLIAMS,

Plaintiff,

v.

DEPUTY LINGUARD;  
and KARIANNE KUNDERT,

Defendants.

-----

ORDER

02-C-0472-C

Plaintiff is proceeding in forma pauperis in this case on two claims: 1) on May 19, 1996, defendant Kundert retaliated against him for naming her as a defendant in a § 1983 complaint by failing to conduct an impartial disciplinary hearing and forging another person's signature on his appeal form; and 2) on April 29, 1996, defendant Linguard subjected him to cruel and unusual punishment by directing an inmate to turn up the volume on the television knowing plaintiff had tinnitus, an ear condition that would cause him to suffer intense ringing in the ear and an excruciating migraine headache from the noise. On February 19, 2003, defendants moved for summary judgment and a briefing schedule was established giving plaintiff until March 27, 2003, in which to respond. In their

motion, defendants request dismissal of plaintiff's case on the ground that plaintiff's claims are barred by the applicable statute of limitations. (This affirmative defense also was raised in defendants' answer to plaintiff's complaint.) Alternatively, defendants request summary judgment in their favor on the merits of plaintiff's claims. Specifically, they contend that 1) defendant Linguard could not have deliberately directed another inmate to turn up the volume on the television in order to cause plaintiff pain because she was not aware that plaintiff suffered from tinnitus and, more important, was not even working in the area in which plaintiff was confined on April 29, 1996; and 2) defendant Kundert did not retaliate against plaintiff, because plaintiff would have been punished for his misconduct whether or not defendant Kundert participated in his disciplinary hearing.

Instead of opposing the motion in the time allowed to do so, plaintiff moved for leave to file an amended complaint. In the amended complaint, he attempted to revive a claim of conspiracy under 42 U.S.C. § 1985(3), which was dismissed as legally frivolous from his original complaint. The motion to amend was denied in an order dated April 7, 2003.

On April 22, 2003, nearly a month after he was to have opposed defendants' motion for summary judgment, plaintiff filed a "Motion to Stay or Delay Summary Judgment and Allow Discovery or as Alternative Dismiss Suit Without Prejudice." That motion is presently before the court. In this motion, plaintiff complains that he did not have enough time to complete discovery before being required to respond to defendants' motion. He

states that before he can respond to the motion for summary judgment, he will need to have defendants' responses to his discovery requests served on them sometime in early April, so that he can prove that 1) defendant Linguard was working in the area where plaintiff was housed on the date in question and knew that plaintiff had tinnitus; and 2) there was an "ongoing agreement between Deputy Lori Linguard, Karianne Kundert and Dane County Sheriffs Department staff, including the Sheriff (Richard F. Raemisch), whom plaintiff filed several handwritten complaints with between 1995 and 1997 concerning the listed violations to harass, deny access to court, discriminate against, retaliate against, deny due process and inflict pain and suffering upon plaintiff."

Also before the court is defendants' May 9, 2003, motion for a protective order. In this motion, defendants point out that plaintiff's discovery requests seek documents and information covering a 10-year span from January 1993 to January 2003, and that if they are required to comply with plaintiffs' requests, it will cost "thousands of dollars" in copying costs and result in the production of vast volumes of material irrelevant to the claims on which plaintiff has been allowed to proceed.

Turning first to plaintiff's motion to stay or delay a decision on defendants' motion for summary judgment, I note that defendants filed their motion well in advance of the deadline for filing dispositive motions established in Magistrate Judge Stephen Crocker's preliminary pretrial conference order. The magistrate judge gave the parties until June 12,

2003, in which to file dispositive motions. Defendants filed their motion on February 19, 2003, beating the magistrate judge's deadline by nearly four months.

Fed. R. Civ. P. 56(f) allows a district court to order a continuance when it appears that a party opposing a motion for summary judgment cannot adequately oppose the motion without undertaking discovery. In this case, I am persuaded that it would be proper to grant plaintiff a continuance of the March 27 deadline for the purpose of obtaining discovery that would enable him to respond to defendants' motion relating to the merits of plaintiff's claims. However, defendants raise an affirmative defense in their motion that must be decided before the court considers the merits of plaintiff's claims; that is, whether plaintiff's claims are barred by the applicable statute of limitations. The facts relevant to the question whether plaintiff's claims are time-barred are discernible from plaintiff's complaint. If they had wished to do so, defendants could have raised this defense in a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). See Leavell v. Kieffer, 189 F.3d 492, 494-495 (7th Cir. 1999)(where complaint shows that time for litigation has passed, judgment on pleadings may be entered under Fed. R. Civ. P. 12(c)). There is no reason to treat a Rule 12(c) motion as a motion for summary judgment unless matters outside the pleadings are presented to and not excluded by the court.

Defendants did not present evidence outside the pleadings in support of their statute of limitations defense. In addition, plaintiff has not opposed the defense with evidentiary

matter or suggested in his motion for a stay that defendants have evidence he needs to prove that the defense is invalid. Indeed, from plaintiff's own explanation of the type of information he is attempting to discover, it appears that plaintiff is still focused on proving a claim that has been dismissed from this lawsuit, that is, that defendants and a multitude of other jail officials conspired over ten years to deprive him of his constitutional rights.

Because neither party has submitted matters outside the pleadings on the statute of limitations question, I construe defendants' motion for summary judgment as including a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) on the ground that plaintiff's claims are barred by the statute of limitations. Because plaintiff's motion for a stay offers no valid reason why plaintiff could not have opposed defendants' statute of limitations defense by the March 27 deadline, I consider that motion now ready for a decision.

The statute of limitations for §1983 actions is generally governed by the law of the appropriate state. Burnett v. Gratton, 486 U.S. 42, 47-48 (1984). The state's statute of limitations rules are followed unless they defeat the goals of the federal statute at issue. Wilson v. Garcia, 471 U.S. 261, 269 (1985). In this case, plaintiff's complaint alleges that the underlying events occurred in Wisconsin while he was a prisoner at the Dane County jail. In Wisconsin, the statute of limitations for § 1983 civil rights actions is the six-year limit used for injuries to character or rights. Gray v. Lacke, 885 F. 2d 399 (7th Cir. 1989).

The complaint shows that the noise claim against defendant Linguard accrued on April 29, 1996, and the retaliation claim against defendant Kundert accrued on May 19, 1996. (Plaintiff alleges in his complaint that just before his May 19 disciplinary hearing, he informed defendant Kundert that he was suing her in a § 1983 action and that for this reason, he believed she could not be an impartial decisionmaker at his disciplinary hearing. Thus, this case does not present a situation where a plaintiff does not learn of the alleged retaliatory motive for an act until sometime after the act occurs.) Plaintiff's complaint was signed on July 28, 2002 and filed with the court on August 7, 2002. He missed the six-year deadline for filing his claims of constitutional wrongdoing by more than two months.

Because I am granting defendants' motion to dismiss this case on the ground that plaintiff's claims are barred by the statute of limitations, I will deny as moot both plaintiff's motion for a continuance of the schedule for briefing defendants' motion for summary judgment and defendants' motion for a protective order.

#### ORDER

IT IS ORDERED that the portion of defendants' motion for summary judgment in which defendants seek dismissal of plaintiff's lawsuit as barred by the statute of limitations is construed as a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), and this motion is GRANTED.

Further, IT IS ORDERED that plaintiff's "Motion to Stay or Delay Summary Judgment and Allow Discovery or as Alternative Dismiss Suit Without Prejudice" and defendants' motion for a protective order are DENIED as moot.

The clerk of court is directed to enter judgment in defendants' favor and close this case.

Entered this 14th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge