

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

NORMAN MALONE,

Petitioner,

v.

CORRECTIONS CORPORATION OF AMERICA,

Respondents.

ORDER

07-C-377-C

In an order dated September 11, 2007, I dismissed this case because it was clear from the allegations in petitioner's complaint that the limitations period for his claim had run. Petitioner brought various claims under 42 U.S.C. § 1983 in which he alleged that corrections officials violated his constitutional rights while he was housed at a privately-run facility in Oklahoma, but remained in the custody of the state of Wisconsin. Because the events that were subject of the lawsuit took place in Oklahoma, it is that state's personal injury statute of limitations that applies. That statute of limitations is two years. Because the events giving rise to this suit occurred in 2003 and plaintiff did not file his lawsuit until 2007, I was required to conclude that the case was untimely.

Petitioner has filed a motion to alter or amend the judgment under Fed. R. Civ. P.

59(e), in which he argues that Wisconsin's six-year statute of limitations should apply. He relies on an Oklahoma state law that says that Oklahoma state courts may not hear cases brought by out-of-state prisoners being held in Oklahoma, Okla. Stat. tit. 57, § 563.2(k), and the contract between the Wisconsin Department of Corrections and the entity running the Oklahoma facility (respondent Corrections Corporation of America), which states that Wisconsin law will govern any disputes arising out of the contract.

Petitioner's reliance on the Oklahoma law and the contract is understandable. It is not unreasonable to believe that because the state of Wisconsin had custody of petitioner and because Wisconsin law governs some matters relating to his incarceration in Oklahoma, Wisconsin law would govern *all* matters relating to his incarceration. Unfortunately for petitioner, that is not the case. Petitioner's claims do not arise under the contract but under the Constitution and 42 U.S.C. § 1983. Thus, it makes no difference to this case what law might govern a breach of contract dispute. Similarly, the Oklahoma statute addresses the question where a prisoner may file a lawsuit; it does not address the question what state's law applies.

The only question relevant to the dismissal of this case is which state's statute of limitations applies in a § 1983 case. The court of appeals' holding is unequivocal on this point: it is "the state where the alleged injury occurred." Brademas v. Indiana Housing Finance Authority, 354 F.3d 681, 685 (7th Cir. 2004). Because petitioner alleges in his

complaint that all of his injuries occurred in Oklahoma, that state's two-year statute of limitations applies.

Finally, petitioner falls back on his status as pro se litigant and the court's obligation to construe pro se complaints liberally. This argument misses the mark because I did not dismiss his complaint as a result of any failure by petitioner to plead enough facts. Rather, it was clear from the allegations in his complaint that the statute of limitations had run on his claims. In such a case, I am required under 28 U.S.C. § 1915 to dismiss the case for petitioner's failure to state a claim upon which relief may be granted. Jones v. Bock, 127 S. Ct. 910, 920-21 (2007) ("A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief. If the allegations, for example, show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim.").

ORDER

IT IS ORDERED that petitioner Norman Malone's motion to alter or amend the

judgment is DENIED.

Entered this 26th day of September, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge