

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

DAVID SIMMONS, :  
 :  
 Plaintiff, :  
 :  
 V. : CASE NO. 3:04CV2044 (RNC)  
 :  
 DELROY SIMPSON, ET AL., :  
 :  
 Defendants. :

RULING AND ORDER

David Simmons, a Connecticut inmate, brings this action pro se and in forma pauperis pursuant to 42 U.S.C. § 1983 against two Norwalk police officers and a security guard. He alleges that the defendants violated his rights in connection with his arrest on October 4, 2001. He also alleges that the officers fabricated their arrest report and withheld evidence at his ensuing trial, which led to his wrongful conviction.

Because plaintiff is a prisoner seeking redress from state officers, the court must review the complaint to determine if it states a claim on which relief may be granted. See 28 U.S.C. § 1915A (2005). Dismissal of a prisoner's complaint pursuant to this mandatory screening process is proper if it appears beyond doubt that the prisoner can prove no set of facts consistent with his allegations that would entitle him to relief. McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004). Dismissal is also proper when a claim is clearly barred by a dispositive defense, such as the statute of limitations. See Pino v. Ryan, 49 F.3d

51, 53 (2d Cir. 1995); Nicholson v. Lenczewski, 356 F. Supp. 2d 157, 164-65 (D. Conn. 2005).

In this case, plaintiff's allegations concerning defendants' conduct on the day of his arrest are time-barred. To be timely, any § 1983 claims based on these allegations had to be filed in court within three years of the arrest. See Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994) (Connecticut's three year statute of limitations for personal injury claims applies to claims brought pursuant to 42 U.S.C. § 1983). Plaintiff is deemed to have filed the complaint on November 30, 2004, which is the day he signed the complaint. Having missed the filing deadline by nearly two months, he cannot proceed on these claims.

Plaintiff's allegations concerning defendants' fabrication and withholding of evidence fail for a different reason. Though these allegations potentially could support claims for false arrest and malicious prosecution, the allegations themselves necessarily imply that his conviction is unlawful. Under the Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), a plaintiff who has been convicted cannot recover damages under § 1983 based on allegations of false arrest or malicious prosecution unless he can allege and prove that his conviction has been reversed on appeal or invalidated by a state or federal court's issuance of a writ of habeas corpus.

Accordingly, the complaint is hereby dismissed without

prejudice pursuant to 28 U.S.C. § 1915A for failure to state a claim on which relief can be granted. If plaintiff believes he can cure the defects in the complaint identified in this ruling, he may file an amended complaint on or before November 15, 2005. Plaintiff's pending motion for appointment of counsel is denied without prejudice to renewal in the event he is able to successfully amend the complaint. The Clerk is directed to close the file. It is certified that any appeal in forma pauperis from this order would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a).

So ordered.

Dated at Hartford, Connecticut this 29<sup>th</sup> day of September 2005.

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Robert N. Chatigny  
United States District Judge