UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DENNIS M. RAGSTON, JR.	:	
Plaintiff,	:	
V.	:	CASE NO. 3:00CV2262(RNC)
K-9 OFFICER VEIGA, et al.,	:	
Defendants.	:	

RULING AND ORDER

Plaintiff brings this action pro se and in forma pauperis under 42 U.S.C. § 1983 seeking damages for excessive force in violation of the Fourth Amendment. Defendants have filed a motion for summary judgment claiming that plaintiff's claim is time-barred by the three-year statute of limitations contained in Conn. Gen. Stat. § 52-577. It appears that the claim was filed more than three years after the cause of action accrued. Accordingly, defendants' motion is granted.

Background[1]

On November 19, 1997, plaintiff was at his sister's apartment in Norwich, Connecticut. On that date, Officer James Veiga, Detective Scott Smith, and other Norwich police officers went to the

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[1] The background facts are taken from defendants' Local Rule 9(c)(1) Statement. Despite specific notice from Magistrate Judge Donna F. Martinez (dated March 6, 2002), plaintiff failed to file a Local Rule 9(c)(2) statement. As a result, pursuant to Rule 9(c)(1), all facts contained in defendants' statement are deemed admitted. D. Conn. L. R. Civ. P. 9(c)(1).

apartment with an arrest warrant charging plaintiff with felony assault. The police knocked at the door, prompting plaintiff to go upstairs and hide in a closet. The officers announced that they had a police dog and that if plaintiff did not come out they would send the dog in. The officers then entered the apartment and arrested plaintiff pursuant to the warrant. Later the same day, plaintiff was treated for dog bites at a Norwich hospital.

Plaintiff signed his complaint on November 21, 2000. At some later point, he gave it to a counselor at the MacDougall Correctional Institution to be mailed to the court. The complaint was received and docketed on November 27, 2000.

Standard for Summary Judgment

To prevail on a motion for summary judgment, the moving party must establish that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); see generally Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). To withstand a properly supported motion, the opposing party cannot rest merely on allegations or denials but must offer evidence demonstrating the existence of a triable issue. See Fed. R. Civ. P. 56(e). In deciding a motion for summary judgment, the court resolves "all ambiguities and draw[s] all inferences in favor of the nonmoving party." Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d

Cir. 1992). Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991).

Papers submitted by a party acting pro se are read liberally and interpreted to raise the strongest possible arguments. See Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994). Nonetheless, a "bald assertion" unsupported by evidence will not withstand a properly supported motion for summary judgment. Carey v. Crescenzi, 923 F.2d 18, 21 (2d Cir. 1991).

Discussion

Defendants contend that plaintiff's complaint was filed beyond the applicable time permitted by the statute of limitations.[2] The limitations period for an action brought under 42 U.S.C. § 1983 is determined by the state statute of limitations and associated tolling provisions. See Bd. of Regents v. Tomanio, 446 U.S. 478, 484 (1980);

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[2] Defendants filed their motion for summary judgment on February 8, 2002. On February 20, 2002, plaintiff filed a document entitled "Motion of Declaration in Opposition to the Defendants' Motion for Summary Judgment." On March 7, 2002, Magistrate Judge Martinez issued a notice pursuant to Vital v. Interfaith Med. Ctr., 168 F.3d 615 (2d Cir. 1999), and McPherson v. Coombe, 174 F.3d 276 (2d Cir. 1999), informing plaintiff of the elements of a proper response to a motion for summary judgment under federal and local rules, of the deadline for filing a response, and of the consequences of not filing or of filing an insufficient response. On May 7, 2002, plaintiff filed a document entitled "Memorandum in Opposition to the Defendants' Motion for Summary Judgment" with attached exhibits. Plaintiff has not filed a Local Rule 9(c)(2) Statement or other documentary evidence.

Leon v. Murphy, 988 F.2d 303, 310 (2d Cir. 1993). In Connecticut, the three-year personal injury statute of limitations contained in section 52-577 of Connecticut General Statutes applies to civil rights actions brought under § 1983. See Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994); In re State Police Litigation, 888 F. Supp. 1235, 1248-49 (D. Conn 1995).

While state law determines the limitations period for a § 1983 claim, federal law determines when such a claim accrues. See Eagleston v. Guido, 41 F.3d 865, 871 (2d Cir. 1994). Under federal law, a § 1983 claim accrues when "the plaintiff knows or has reason to know of the harm" or injury that forms the basis of the action. Id.

In this case, plaintiff's complaint alleges that defendants used excessive force when they arrested him "on or about December 5th of 1997." Defendants have submitted abundant evidence that the arrest actually took place on November 19, 1997, including affidavits of Officer Veiga and Detective Smith, plaintiff's criminal history record, medical records from the hospital emergency room where plaintiff's bite wounds were treated, and parts of plaintiff's deposition testimony.[3] Plaintiff has offered no evidence to

[3] Plaintiff's deposition testimony includes the following:

Q: Would you agree with me that if the records at Backus Hospital show that you were treated for a dog bite on

(continued...)

controvert this showing. Accordingly, I find that the arrest and dog bites took place on November 19, 1997, and that the plaintiff's cause of action under § 1983 accrued on that date.

A prisoner's complaint is deemed filed on the date it is given to prison officials for delivery to court. See Houston v. Lack, 487 U.S. 266, 270 (1988) (holding that pro se prisoner's notice of appeal was filed when given to prison officials for delivery); Dory v. Ryan, 999 F.2d 679, 681-82 (2d Cir. 1993) (holding pro se inmate's civil complaint filed when given to prison officials for delivery). It is uncontested that plaintiff signed his complaint on November 21, 2000, and delivered it to prison officials at some later time. Even assuming plaintiff handed his complaint to the prison counselor immediately after signing it, the complaint was filed more than three

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[3](...continued)

November 19, 1997, then that is when the dog bite occurred?

A: Yes, then I would agree that the date on the pictures was wrong, but from the same dog bite.

Q: Okay. In any event, you are certain that the dog bite happened in November?

A: Yes.

Q: You believe it was either the 19th or the 20th, but you would agree with me that it definitely did not happen in December?

A: No.

Q: It did not happen in December, did it?

A: No.

Q: Okay. Am I correct that the police came to your sister's apartment on 9 Grove Street in Norwich on November 19, 1997, with a warrant to arrest you?

A: Yes.

(Ragston Dep. at 47-48.)

years after his claim accrued.[4] Plaintiff provides no facts that warrant tolling the statute of limitations.

Conclusion

For the foregoing reasons, defendants' motion for summary judgment is granted.

So ordered.

Dated at Hartford, Connecticut this 30th day of September 2002.

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Robert N. Chatigny
United States District Judge

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[4] In his response to defendants' motion, plaintiff states that parts of his complaint were drafted on November 16, 2000. Because the relevant date is the date plaintiff handed the complaint to prison officials for delivery to the court, not the date the complaint was drafted, his assertion is unavailing.