

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John J. Richards,	:
	:
Petitioner	: No. 546 M.D. 2010
	: Submitted: August 16, 2013
	:
v.	:
	:
Commonwealth of Pennsylvania, et al.	:
Department of Corrections, Jeffrey	:
Beard, Former Secretary; SCI-Houtzdale	:
Employess, Randall Britton,	:
Former Superintendent; David Perry,	:
Business Office Mgr.; Tanja Hayles,	:
Inmate Records; Doreen Dick, Inmate	:
Accounts; Philadelphia County, Eugene	:
Tull, Costs and Fines Supervisor Clerk	:
of Quarter Sessions Philadelphia County,	:
	:
Respondents	:

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: October 11, 2013

Before this court in our original jurisdiction are an application for summary relief filed by John J. Richards, *pro se*, and a cross-application for summary relief filed by Eugene Tull and the Philadelphia County Clerk of Courts (Philadelphia

Respondents).¹ Richards alleges that the Department of Corrections (DOC) improperly deducted funds from his inmate account to pay restitution pursuant to section 9728 of the Sentencing Code,² 42 Pa. C.S. §9728, commonly known as Act 84.³ Because Richards' claims are time-barred by the applicable statutes of limitations, we deny his application for summary relief and grant the Philadelphia Respondents' cross-application for summary relief.

On May 1, 2001, Richards received a four-year sentence for burglary in the Philadelphia County Court of Common Pleas (trial court). (Am. Pet. for Review, ¶ 2.) The trial court judge sentenced him to pay \$5,000 in restitution and \$206 in court costs. (*Id.*, ¶ 2, Ex. B1.) The May 1, 2001, court commitment form (DC-300B) includes the \$5,000 in restitution. (Am. Pet. for Review, Ex. A3.) However, the sentencing order signed by the trial court judge and the court clerk is silent on the matter of restitution. (*Id.*, ¶ 19, Ex. A1.) Notably, on September 30, 2011, a decade later, the trial court issued a clarifying order stating that "restitution in the matter was ordered in 2001 in the amount of \$5,000." (Trial Ct. Order, 9/30/11.)

¹ Richards asserts that Eugene Tull was the Costs and Fines Supervisor at the Clerk of Quarter Sessions of Philadelphia County. However, we observe that this office has been abolished and replaced by the Philadelphia Clerk of Courts.

² 42 Pa. C.S. §§9701 – 9799.9.

³ In addition to DOC, Richards included as parties the former DOC secretary, Jeffrey Beard; and SCI-Houtzdale employees Randall Britton, former Superintendent; David Perry, Business Office Manager; Tanja Hayles, Inmate Records; and Doreen Dick, Inmate Accounts.

On December 19, 2002, DOC began deducting funds pursuant to Act 84 from Richards' inmate account. (Am. Pet. for Review, ¶ 3.) Between December 2002 and March 2010, DOC withdrew a total of \$4,734.99 from Richards' account. (*Id.*, ¶ 31.) From that amount \$2,043.49 was remitted to the Philadelphia Respondents for past and present court cases and \$2,877.48 in restitution towards the burglary sentence.⁴ (*Id.*, ¶¶ 32-35.)

In October 2009, Richards submitted requests to DOC to review his sentencing order, questioning the balance owed. On February 15, 2010, Richards filed a formal inmate grievance, challenging the deductions because DOC relied on the DC-300B form instead of a signed sentencing order. (*Id.*, Ex. C.) On March 18, 2010, DOC stopped the Act 84 deductions, but when Richards sought reimbursement, DOC informed him that he needed to seek repayment from the Philadelphia Respondents. (*Id.*, Ex. C5.)

On June 18, 2010, Richards filed a petition for review with this court seeking an order to return all prior deductions. DOC filed preliminary objections arguing that the majority of the petition for review was not divided into consecutively numbered paragraphs. This court gave Richards the opportunity to file an amended petition for review, which he did on January 18, 2011. DOC filed preliminary objections to the amended petition for review, arguing that the DC-300B provided sufficient authorization for its deductions. This court agreed and, on February, 25,

⁴ We note that the values alleged by Richards exceed the amount that DOC admits was withdrawn by \$185.98.

2011, sustained DOC's preliminary objections because Richards had conceded in his petition for review that he owed restitution for past cases.

Richards filed a notice of appeal with the Pennsylvania Supreme Court arguing that this court neglected to address the claim against the Philadelphia Respondents. Richards and DOC agreed that this court had misconstrued the factual allegations of the amended petition for review. Accordingly, on April 25, 2012, the Pennsylvania Supreme Court vacated this court's February 25, 2011, order. *Richards v. Commonwealth of Pennsylvania*, ___ Pa. ___, 42 A.3d 1002 (2012).

On August 27, 2012, this court filed an order dismissing DOC as a party. On January 25, 2013, Richards filed an application for summary relief.⁵ *See* Pa. R.A.P. 1532(b). On April 4, 2013, the Philadelphia Respondents filed a cross-application for summary relief.

Richards argues that the original, written judgment of sentence did not include restitution and that the clarifying order issued by the trial court was *void ab initio*; therefore, DOC withdrew the funds without authorization. The Philadelphia Respondents raise, *inter alia*, the affirmative defense of a violation of the statute of limitations.

⁵ "In ruling on an application for summary relief, we must view the evidence in the light most favorable to the non-moving party. Judgment may only be entered in cases where there is no genuine issue of material fact and the right to judgment is clear as a matter of law." *Ingram v. Newman*, 830 A.2d 1099, 1102 n.4 (Pa. Cmwlth. 2003).

Under Section 5522(b)(1) of the Judicial Code, a plaintiff bringing an action against “any officer of any government unit for anything done in the execution of his office” has six months from the date of the injury to file a claim. 42 Pa. C.S. §5522(b)(1). “[A] statute of limitations period begins to run when a cause of action accrues; i.e., when an injury is inflicted and the corresponding right to institute a suit for damages arises.” *Gleason v. Borough of Moosic*, 609 Pa. 353, 361-62, 15 A.3d 479, 484 (2011).

This court examined an analogous situation in *Curley v. Smeal*, 41 A.3d 916 (Pa. Cmwlth. 2012). In *Curley*, an inmate challenged Act 84 deductions where his written sentencing order from the trial court did not expressly state that he was sentenced to pay costs or fines. *Id.* at 917. However, the deductions had commenced in 2002 and the inmate did not contest them until August 2004. *Id.* at 918. Because the statute of limitations is six months, the inmate’s petition was time-barred. *Id.* at 919.

Here, DOC began making deductions from Richards’ inmate account on December 19, 2002. (Am. Pet. for Review, ¶ 3.) Thus, Richards had until June 19, 2003, to contest the Act 84 deductions. Richards did not file an inmate grievance until February 15, 2010, and did not file his petition for review until June 17, 2010.

Richards maintains that he could not obtain a copy of his sentencing order until March 22, 2010, and remained reasonably unaware of the injury; thus, the

statute of limitations should be tolled.⁶ *See Gleason*, 609 Pa. at 362-63, 15 A.3d at 485 (“The discovery rule applies to toll the statute of limitations in any case in which a party is reasonably unaware of his or her injury at the time his or her cause of action accrued.”). However, the party seeking to bring the action has the affirmative duty to use all reasonable diligence to learn the facts and circumstances that form the right of recovery and to bring the suit within the prescribed time period. *Id.* at 362, 15 A.3d at 484. “A lack of knowledge, mistake or misunderstanding does not toll the statute of limitations.” *Curley*, 41 A.3d at 919.

Richards had notice that the deductions were related to Act 84 when deductions commenced on December 19, 2002. Richards’ lack of knowledge does not toll the statute of limitations, and the discovery rule is inapplicable. *See Curley*, 41 A.3d at 919-20. Therefore, the statute of limitations began to run on December 19, 2002, and Richards’ claims were, therefore, untimely.

Richards also argues that the Philadelphia Respondents violated his Due Process rights. *See* U.S. Const. amend. XIV; Pa. Const. art. I, §9. However, actions brought under 42 U.S.C. §1983 and state constitutional claims are subject to section 5524 of the Judicial Code, which imposes a two-year statute of limitations. 42 Pa. C.S. §5524; *see also Lake v. Arnold*, 232 F.3d 360, 368 (3d Cir. 2000) (“In determining which state limitations period to use in federal civil rights cases, we look to the general, residual statute of limitations for personal injury actions.”); *Storch v. Miller*, 585 A.2d 1173, 1174 (Pa. Cmwlth. 1991) (applying the two-year statute of

⁶ Richards does not explain why he filed his inmate grievance in February 2010 if he did not learn of the sentencing order until March 2010.

limitations of 42 Pa. C.S. §5524 to state constitutional claims). Accordingly, Richards' Due Process claims are also time-barred.

Because Richards' claims are time-barred by the applicable statutes of limitations, we deny Richards' application for summary relief and grant the Philadelphia Respondents' cross-application for summary relief.

ROCHELLE S. FRIEDMAN, Senior Judge

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Accounts; Philadelphia County, Eugene	:
Tull, Costs and Fines Supervisor Clerk	:
of Quarter Sessions Philadelphia County,	:
	:
Respondents	:

ORDER

AND NOW, this 11th day of October, 2013, we hereby deny John J. Richards' application for summary relief and grant Eugene Tull and the Philadelphia County Clerk of Courts' cross-application for summary relief.

ROCHELLE S. FRIEDMAN, Senior Judge