

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

WAYNE AVERILL)	
)	
Plaintiff,)	
)	
v.)	C.A. No. N10C-07-128 JRJ
)	
STATE OF DELAWARE,)	
ALEX J. SMALLS, CAROLE)	
KIRSHNER,)	
)	
)	
Defendants.)	

OPINION

Date Submitted: May 17, 2012
Date Decided: June 25, 2012

*Decision of the Superior Court pursuant to the Order of Remand from the
Delaware Supreme Court dated August 18, 2011
Upon Defendant's Motion to Dismiss: GRANTED*

Wayne Averill, Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977, *pro se*

Joseph C. Handlon, Esquire, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 North French Street, Sixth Floor, Wilmington, DE 19801, Attorney for Defendants.

Jurden, J.

INTRODUCTION

Before the Court is the State of Delaware, the Honorable Chief Judge Alex J. Smalls, and Carole Kirshner's (collectively "Defendants")¹ Motion to Dismiss, arising out of claims of sexual abuse by former judge William C. Bradley, Jr. ("Bradley"). Wayne Averill ("Plaintiff") alleges that Bradley committed "prohibited sexual acts" on him as a child and adult between July 1990 and September 1998 ("1990 to 1998 claims") and again in April 2008 ("2008 claims").² Plaintiff alleges that these incidents occurred at Bradley's home and in his chambers at the New Castle County Court House.³ Although the Court previously held that Plaintiff's 1990 to 1998 claims are time-barred,⁴ Plaintiff argues that the Court should view the 1990 to 1998 claims and the 2008 claims as one continuous string of events, and therefore, allow him to proceed. Plaintiff also claims that because his claims are continuous acts, Chief Judge Smalls and Carole Kirshner are responsible for Plaintiff's alleged sexual abuse.⁵

¹ Plaintiff is suing Chief Judge Smalls and Carole Kirshner in both their official and individual capacities because of their positions as Chief Judge and Court Administrator of the Court of Common Pleas Delaware, respectively.

² Plaintiff's Complaint ("Pl.'s Comp.") (Trans. ID. No. 32301238) at ¶7.

³ *Id.* at ¶¶7, 171.

⁴ The Court's July 16, 2010 Order (Trans. ID. No. 32301677) (noting that the time for filing a claim was extended to July 2009 under, but not later), *aff'd by Averill v. Bradley*, 2011 WL 3652473, at *2 (Del.) (ORDER) (remanding for determination as to whether the 2008 claims are time-barred).

⁵ Pl.'s Comp. at ¶175

PROCEDURAL HISTORY

On July 16, 2010, the Court summarily dismissed Plaintiff's Complaint as barred by the statute of limitations.⁶ On August 18, 2011, the Delaware Supreme Court affirmed the summary dismissal of the 1990 to 1998 claims on statute of limitations grounds, but held that the record was unclear as to the date Plaintiff filed his 2010 complaint.⁷ Thus, the Supreme Court remanded "for a determination as to whether the 2008 claims are time-barred."⁸ This is the Court's decision on remand.

STANDARD OF REVIEW

When considering a Motion to Dismiss under Superior Court Civil Rule 12(b)(6), the Court assumes that all well-pled allegations of the Complaint are true.⁹ Accordingly, the Court will not dismiss a complaint "unless the plaintiff would not be entitled to recover under any reasonable set of circumstances susceptible of proof."¹⁰

⁶ See n. 4 *infra*.

⁷ *Averill*, 2011 WL 3652473, at *1.

⁸ *Id.*

⁹ *Brevet Capital Special Opportunities Fund, LP v. Fourth Third, LLC*, 2011 WL 3452821, at *6 (Del. Super.) (citing *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998)).

¹⁰ *Brevet*, 2011 WL 3452821, at *6 (citing *Nix v. Sawyer*, 466 A.2d 407, 410 (Del. Super. 1983)).

DISCUSSION

Plaintiff's allegations sound in personal injury as a result of Bradley's alleged sexual abuse, and thus, his claim is subject to the two year statute of limitations period in 10 *Del. C.* § 8119.¹¹ Because Plaintiff's 1990 to 1998 claims are time-barred, the relevant facts before this Court are those involving the 2008 claims. Plaintiff approximates the last incident of sexual abuse occurred on April 24 or 25, 2008, and thus, Plaintiff had until April 25, 2010 to file his Complaint. Plaintiff dated his Complaint April 5, 2010, however, he did not file it until May 11, 2010.¹² Applying the applicable two-year statute of limitations, Plaintiff's Complaint is untimely.

CONCLUSION

Because Plaintiff filed his Complaint on May 11, 2010, Plaintiff's Complaint is barred by the two-year statute of limitations for personal injury actions.¹³

IT IS SO ORDERED.

¹¹ 10 *Del. C.* § 8119 provides in pertinent part: “[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained”

¹² Del. Super. Ct. Civ. R. 3(a) provides: “an action is commenced by filing with the Prothonotary a complaint” The Court is aware that Plaintiff is currently incarcerated. However, there is no prisoner mailbox rule, and thus, the date of the filing stands as the date the Court considers when examining the statute of limitations. *See Carr v. State*, 554 A.2d 778, 779 (Del. 1989) (holding that there is no prison mailbox rule in Delaware).

¹³ Plaintiff served his Summons and Complaint by Sheriff upon Governor Jack Markell on September 29, 2011. To date, Governor Markell has not responded.

Jan R. Jurden, Judge

cc: Prothonotary