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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

JAY JEFFERS, JR.,)	
)	
Plaintiff,)	
)	
v.)	CIV 04-0572 PHX MHM (LOA)
)	
JOSEPH ORTEGA, REBECCA)	ORDER
SPURLOCK, CORPORAL WILLIAMS,)	
DR. LIZARRAGA,)	
)	
Defendants.)	
_____)	

Before the Court is Defendant Lizarraga's motion to dismiss Plaintiff's amended complaint [Docket No. 86] pursuant to Rule 12(c), Federal Rules of Civil Procedure.

I Procedural History

Plaintiff was incarcerated at the Pinal County Jail from December 16, 2000, through April 2, 2001. On March 22, 2004, Plaintiff, proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights. On September 3, 2004, the Court ordered Defendants Ortega, Williams, and Spurlock to answer the allegation that they were deliberately indifferent to Plaintiff's serious medical needs in violation of Plaintiff's Eighth Amendment rights. See Docket No. 9.

1 Plaintiff filed a motion to amend his complaint to add
2 Dr. Lizarraga as a defendant in this matter on March 29, 2005,
3 and another motion to amend his complaint on May 4, 2005. See
4 Docket No. 23 & Docket No. 39. Pursuant to an order of the
5 Court, Plaintiff lodged a proposed amended complaint on June 3,
6 2005. On June 9, 2005, the Court ordered Plaintiff to serve the
7 amended complaint on Defendants Williams and Ortega, and to
8 serve the amended complaint on Defendant Lizarraga. See Docket
9 No. 44. Defendants Ortega, Williams, and Spurlock answered the
10 amended complaint on August 1, 2005. See Docket No. 49. On
11 September 20, 2005, Defendant Lizarraga filed an answer to the
12 amended complaint. See Docket No. 75.

13 Defendant Lizarraga filed a motion to dismiss the
14 amended complaint on October 11, 2005. Docket No. 86.
15 Defendant asserts Plaintiff's claims against him must be
16 dismissed because Plaintiff did not file his section 1983
17 complaint within the applicable statute of limitations.
18 Plaintiff filed a response to the motion on December 23, 2005.
19 Docket No. 115 & Docket No. 116.¹ Defendant filed a reply to the
20 response on January 26, 2006. See Docket No. 126.

21 **II DISCUSSION**

22 **A. Standard for granting a motion to dismiss**

23 In reviewing the defendants' motions under
24 Fed. R. Civ. P. 12(c), the district court
25 views the facts as presented in the pleadings
in the light most favorable to the
plaintiffs, accepting as true all the

26
27 ¹ Defendants Ortega, Williams, and Spurlock filed a motion for
partial summary judgment on December 16, 2005. See Docket No. 109.

1 285, 292 (1976). It is not appropriate to dismiss a pro se
2 prisoner's civil rights action unless it is "beyond doubt that
3 the plaintiff can prove no set of facts in support of his claim
4 which would entitle him to relief." Id.

5 **2. Statute of limitations**

6 Defendant Lizarraga asserts Plaintiff's Eighth
7 Amendment claim against him must be dismissed because Plaintiff
8 did not file his complaint within the two-year statute of
9 limitations applicable to section 1983 actions filed by Arizona
10 inmates.

11 The federal courts apply state statutes of limitation
12 to claims brought by prisoners pursuant to section 1983. See
13 Wilson v. Garcia, 471 U.S. 261, 276, 105 S. Ct. 1938, 1947
14 (1985). In Arizona, the relevant statute of limitations is two
15 years. See, e.g., DeLuna v. Farris, 841 F.2d 312, 313 (9th Cir.
16 1988); Marks v. Parra, 785 F.2d 1419, 1420 (9th Cir. 1986).
17 Additionally, "federal courts must apply not only the
18 appropriate state statute of limitations, but also the
19 applicable state rule for tolling that statute of limitations
20 for actions brought under § 1983." DeLuna, 841 F.2d at 314.
21 The tolling provisions for prisoners civil rights suits in
22 Arizona are contained in Arizona Revised Statutes § 12-502.
23 Pursuant to this statute, imprisonment tolls the applicable
24 statute of limitations until the date the prisoner discovers, or
25 with reasonable diligence should have discovered, his right to
26 sue the defendant. Id. at 315.

1 However, when a section 1983 claim accrues and the
2 relevant statute of limitations begins to run against the
3 claimant is determined according to federal law. See Wilson,
4 471 U.S. at 275, 105 S. Ct. at 1946-47; Elliott v. City of Union
5 City, 25 F.3d 800, 802 (9th Cir. 1994). Within the Ninth
6 Circuit Court of Appeals, the statute of limitations in a
7 section 1983 action begins to run when the plaintiff knows, or
8 has reason to know, that he has been injured. See Kimes v.
9 Stone, 84 F.3d 1121, 1128 (9th Cir. 1996) ("A claim accrues when
10 the plaintiff knows, or should know, of the injury which is the
11 basis of the cause of action.").

12 The discovery rule provides a claim accrues
13 when the plaintiff knows, or should know, of
14 the injury which is the basis of the cause of
15 action. The cause is known when the immediate
16 physical cause of the injury is discovered...
17 The Ninth Circuit has stated repeatedly the
18 plaintiff need not also know the identity of
19 the person who caused the injury. Thus, the
20 statute of limitations begins to run as soon
21 as the plaintiff knows he or she has been
22 injured and knows the physical cause of that
23 injury.

24 Clavette v. Sweeney, 132 F. Supp. 2d 864, 874-75 (D. Or. 2001)
25 (internal citations and quotations omitted).

26 Plaintiff's section 1983 action asserts Defendant
27 Lizarraga was deliberately indifferent to his serious medical
28 needs from December 16, 2000, through April 2, 2001, in
violation of his Eighth Amendment rights. The section 1983
action was not filed within the applicable two-year statute of
limitations. Plaintiff's claim accrued no later than April 2,
2001, and Plaintiff's complaint was not filed until March of

1 2004, almost three years later. See Fink v. Shedler, 192 F.3d
2 911, 914-15 (9th Cir. 1999); TwoRivers v. Lewis, 174 F.3d 987,
3 993 (9th Cir. 1999); DeLuna, 841 F.2d at 314-15; Nasim v.
4 Warden, Maryland House of Corr., 64 F.3d 951, 955 (4th Cir.
5 1995) ("Thus, for purposes of a § 1983 claim, a cause of action
6 accrues either when the plaintiff has knowledge of his claim or
7 when he is put on notice--e.g., by the knowledge of the fact of
8 injury and who caused it--to make reasonable inquiry and that
9 inquiry would reveal the existence of a colorable claim.").

10 Plaintiff asserts in response to the motion to dismiss:
11 "The Federal courts should not determine the length of time in
12 which a Plaintiff has to bring a civil action based on the
13 states limitation time length law." Docket No. 114. Plaintiff
14 further contends:

15 The Federal courts further should base their
16 limitation on the nature of the repeated
17 claims that are brought against them ...
18 Plaintiff filed befor[e] the 3 years
19 limitation law ended, in which I was told
20 that any person seeking to file a lawsuit
21 must file it within 3 years after any
22 incident happens.

23 Id. at 2. Plaintiff further contends that his complaint is not
24 untimely with regard to Defendants Williams, Ortega, and
25 Spurlock, asserting that his damages with regard to these
26 Defendants continues to "accrue." Id.

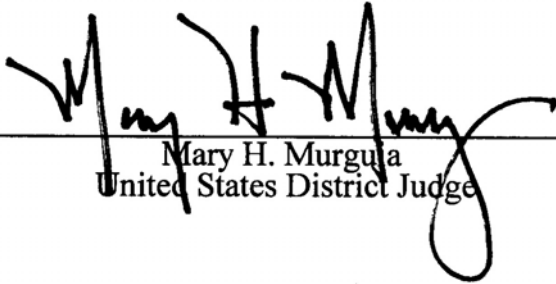
27 Plaintiff knew or should have known of Defendant
28 Lizarraga's involvement in the alleged civil rights violation on
or before April of 2001 and, therefore, the two-year statute of
limitations regarding the civil rights violation stated in his

1 section 1983 action filed in March of 2004 expired prior to his
2 bringing suit. Therefore, the section 1983 claims as against
3 Defendant Lizarraga must be dismissed with prejudice.

4 **THEREFORE, IT IS ORDERED** that Defendant Lizarraga's
5 motion to dismiss the amended complaint [Docket No. 86] is
6 **granted**. Plaintiff's amended complaint is hereby dismissed
7 with prejudice.

8 DATED this 23rd day of August, 2006.

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Mary H. Murgula
United States District Judge