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E-Filed 8/12/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OLIVER VANN,

No. C 08-4756 RS (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

MIKE EVANS, et al.,

Defendants.

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner in which plaintiff alleges that officer and employees of Salinas Valley State Prison violated his First and Eighth Amendment rights. Defendants move to dismiss the complaint on grounds of misjoinder and untimeliness. For the reasons stated herein, the Court grants the motion, and dismisses all claims against all defendants.

CLAIMS

After a review of the complaint, the Court found the following claims cognizable: (1) plaintiff alleges that Thomas, a correctional officer, acted to harm plaintiff in retaliation for an inmate appeal plaintiff filed against Thomas, in violation of plaintiff's First Amendment rights; (2) plaintiff alleges that MacDowell, another correctional officer, used

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1 excessive force against plaintiff, in violation of plaintiff’s Eighth Amendment rights; and
2 (3) plaintiff alleges that Warden Mike Evans knew of the assaultive behavior of Thomas and
3 MacDowell, but failed to prevent his subordinates’ unconstitutional actions.

4 DISCUSSION

5 I. Misjoinder of Claims

6 Plaintiff’s retaliation claim is unrelated to the claims against MacDowell and Evans,
7 which will be dismissed without prejudice. A plaintiff may properly join as many claims as
8 he has against an opposing party. Fed. R. Civ. P. 18(a). Nevertheless, while multiple claims
9 against a single party may be alleged in a single complaint, unrelated claims against different
10 defendants must be alleged in separate complaints. *See George v. Smith*, 507 F.3d 605, 607
11 (7th Cir. 2007) (finding, under Rule 18(a), prisoner improperly brought complaint raising
12 fifty distinct claims against twenty-four defendants). Further, parties may be joined as
13 defendants only if “there is asserted against them jointly, severally, or in the alternative, any
14 right to relief in respect of or arising out of the same transaction, occurrence, or series of
15 transactions or occurrences and if any question of law or fact common to all defendants will
16 arise in the action.” Fed. R. Civ. P. 20(a). As a practical matter, this means that claims
17 involving different parties cannot be joined together in one complaint if the facts giving rise
18 to the claims were not factually related in some way — that is, if there was not similarity in
19 the factual background of a claim. *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997).
20 General allegations are not sufficient to constitute similarity when the specifics are different.
21 *Id.* The court, on its own initiative, may dismiss misjoined parties from an action, and any
22 claim against a misjoined party may be severed and proceeded with separately. Fed. R. Civ.
23 P. 21. Plaintiff’s claims against defendants Evans and MacDowell are DISMISSED without
24 prejudice on grounds that such claims are unrelated to the retaliation claim, especially when
25 one considers that plaintiff fails to allege facts that Thomas himself actually assaulted
26 plaintiff. If plaintiff seeks relief for the claims against Evans and MacDowell, he must file a
27 separate civil rights action naming them as defendants.
28

1 **II. Untimeliness of Retaliation Claim**

2 Plaintiff, who is serving three sentences of life without the possibility of parole,¹
3 alleges that he filed an inmate grievance against Thomas after he had threatened to tell other
4 inmates the false information that plaintiff is a child molester. (Compl. ¶¶ 5 & 6.) Plaintiff
5 alleges that his cellmate, Langdon, assaulted him on November 2, 2004, while calling him a
6 “child molesting spiritual Jew.” (*Id.* ¶ 6.) Plaintiff asserts that Langdon’s attack on him
7 resulted from the acts of Thomas, consistent with his threat, to tell other inmates that plaintiff
8 is a child molester. (*Id.* ¶ 7.) As noted above, plaintiff filed his grievance on October 11,
9 2004 and the alleged assault occurred on November 2, 2004. Plaintiff did not file the instant
10 civil rights action until October 16, 2008.

11 Section 1983 takes its limitations period from the forum state’s statute of limitations
12 for personal injury torts, *see Wilson v. Garcia*, 471 U.S. 261, 276 (1985), which, in
13 California, is two years, *see Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004). This
14 two-year statute of limitations period is tolled for two years if the plaintiff is a prisoner
15 serving a term of less than life thus giving such prisoners effectively four years to file a
16 federal suit. *See* Cal. Civ. Proc. Code § 352.1(a). A prisoner-plaintiff, such the one in the
17 instant matter, who is serving a sentence of life without the possibility of parole, however, is
18 not entitled to the two-year tolling period. *Ross v. Olivarez*, 88 Fed.Appx. 233 (9th Cir.
19 2004).

20 As plaintiff was not entitled to the two-year tolling provision, he was obliged to file
21 his federal complaint by November 3, 2006, at the latest. Plaintiff did not file the instant
22 civil rights actions until October 16, 2008, well past the filing deadline. Accordingly,
23 defendants’ motion to dismiss the retaliation claim as untimely is GRANTED, and the claim
24 is DISMISSED with prejudice.

25
26 **CONCLUSION**

27 _____
28 ¹ Defs.’ Mot. to Dismiss, Req. for Judicial Notice, Ex. A. at 2.)


1 For the above-stated reasons, defendants' motion to dismiss is GRANTED, and all
2 claims are DISMISSED. Plaintiff's claims against McDowell and Evans are DISMISSED
3 without prejudice. If plaintiff so elects, he can refile these claims in a new federal civil rights
4 action. Plaintiff's claims against defendant Thomas are DISMISSED with prejudice.

5 This order terminates Docket No. 11.

6 The Clerk shall enter judgment in favor of defendants, terminate the pending motion,
7 and close the file.

8 **IT IS SO ORDERED.**

9 DATED: August 12, 2010


RICHARD SEEBORG
United States District Judge

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