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AT ROANOKE, VA
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DEC 29 2006
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By: Hon. James C. Turk
Senior United States District Judge

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motions, Barley submits prison records indicating that he had outgoing mail addressed to the Campbell County Circuit Court sent from Powhatan Correctional Center on June 27, 2003, and July 21, 2003.

To state a cause of action under §1983, a plaintiff must establish that he has been deprived of rights guaranteed by the Constitution or laws of the United States and that this deprivation resulted from conduct committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42 (1988). Inmates have a right to reasonable access to courts. Ex parte Hull, 312 U.S. 456 (1941). Barley's allegations, however, do not indicate that he could prove any action undertaken by Mrs. Hodges in violation of his right to access the courts. The mere fact that he mailed some documents to the court in May, June or July 2003, does not prove that anyone at the court, much less Mrs. Hodges, ever received those documents. He offers no other evidence by which he could prove that she had any personal involvement whatsoever with his alleged motions. Accordingly, he fails to state any constitutional claim against this defendant.

Moreover, the court is fully satisfied that Barley's claims are barred by the applicable statute of limitations. Section 1983 actions are governed by the state statute of limitations applicable for general personal injury cases in the state where the alleged violations occur. Owens v. Okure, 488 U.S. 235, 239-40 (1989). Virginia has a two-year statute of limitations for general, personal injury claims. Va. Code Ann. § 8.01-243(a). A cause of action under § 1983 accrues and the statute of limitations begins running "when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action." Nasim v. Warden, Md. House of Correction, 64 F.3d 951, 955 (4th Cir. 1995)(en banc). Furthermore, an inmate's § 1983 action is commenced for purposes of the statute of limitations as soon as he delivers his complaint to prison authorities

for mailing. Lewis v. Richmond City Police Depot, 947 F.2d 733 (4th Cir. 1991). In Virginia § 1983 cases, then, if an inmate has not delivered his complaint to prison officials for mailing within the two year period following the time when he knew or with reasonable inquiry could have known of his alleged injury, that inmate is barred by the Virginia statute of limitations from bringing suit.

Under these principles, the court concludes that plaintiff is barred from bringing suit under § 1983 concerning the motions he allegedly filed in the summer of 2003. Barley knew in July or August 2003 that the circuit court had not yet issued orders in response to his motions. From these facts, he was on notice to make reasonable inquiry into whether the court had received and filed the motions. He would have quickly discovered, with a letter or telephone call, that his motions had not been received or filed by the clerk. Barley signed and dated his current civil rights complaint on December 3, 2006. As he clearly did not file this lawsuit within two years from the date on which he knew or with reasonable inquiry should have known of his alleged injury, it is untimely under § 8.01-243(a). As Barley's factual contentions are no longer actionable under § 1983, this case must be dismissed, pursuant to § 1915A(b)(1), as frivolous. See Nasim, 64 F.3d at 956. An appropriate order shall be entered this day.

The plaintiff is advised that he may appeal this decision pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure by filing a notice of appeal with this court within 30 days of the date of entry of this opinion and the accompanying order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).

ENTER: This 29th day of December, 2006.


Senior United States District Judge