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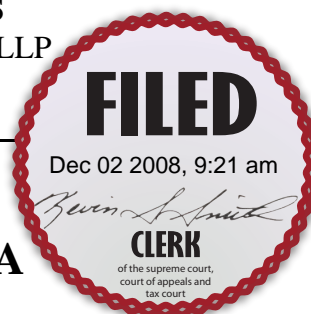
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**IN THE
COURT OF APPEALS OF INDIANA**



OSCAR GUILLEN, SR.,
Appellant-Plaintiff,

vs.

CITY OF HAMMOND, INDIANA,
Appellee-Defendant.

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No. 45A03-0805-CV-250

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Jeffrey J. Dywan, Judge
Cause Nos. 45D11-0802-CB-13

December 2, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Oscar Guillen, Sr., an inmate at Wabash Valley Correctional Facility, appeals the trial court's dismissal of his claims for wrongful arrest and constitutional violations. In his pro se appeal, Guillen raises five issues, which we consolidate and restate as whether the trial court properly dismissed his claims pursuant to Indiana Code section 34-58-1-2. Concluding that Guillen's claims are barred because he filed them after the expiration of the statute of limitations, we affirm.

Facts and Procedural History

Between August of 1998 and August of 2001,¹ Guillen received numerous citations from the Hammond Police Department for violations of the city's animal ordinances. The Hammond City Court imposed fines upon Guillen based on these citations, which he failed to pay. As a result of his failure to pay the fines, the Hammond City Court caused Guillen's Indiana driver's license to be suspended. Thereafter, Guillen received numerous citations for driving while suspended and other traffic related offenses. In early 2003, Guillen, with the assistance of attorney Garry Weiss, secured the dismissal of some or all of the animal ordinance citations, and the Hammond City Court removed the suspension order from Guillen's driving record.

On May 13, 2004, Guillen was convicted of battery, a Class C felony, and sentenced to 2,685 days with the Department of Correction. This court affirmed Guillen's conviction and sentence. See Guillen v. State, 829 N.E.2d 142 (Ind. Ct. App. 2005), trans. denied.

¹ It is very difficult to discern from Guillen's complaint and appellate brief any exact dates of events pertinent to his claims. Because our standard of review requires us to consider the pleadings in the light most favorable to Guillen, we lay out a range of dates in which the events occurred that extends to the latest

Guillen is currently incarcerated at the Wabash Valley Correctional Center and has been incarcerated continuously since his sentencing.

Between May 14, 2005 and September 2, 2005, Guillen sent several requests to the Hammond City Court for information about his various citations for ordinance and traffic violations. There is no evidence in the record to indicate whether Hammond City Court responded to any of these requests. On January 18, 2008, Guillen filed a complaint against the City of Hammond seeking damages for false arrest and imprisonment related to his citations between August of 1998 and August of 2001 and violations of his constitutional rights related to his requests for information between May 14, 2005, and September 2, 2005.

The trial court reviewed Guillen's complaint pursuant to Indiana Code chapter 34-58-1 and found that all of Guillen's claims were barred by the two-year statute of limitations on an action for personal injury. Upon its review of Guillen's claims, the trial court found that "there are no remaining claims which should be allowed to proceed." Appellee's Appendix at 3. Therefore, the trial court ordered: "[T]he Plaintiff's complaint against the Defendant shall not proceed as the causes of action are barred by the two-year statute of limitations. His motion to proceed as a poor person is DENIED." *Id.* Guillen now brings this appeal.

Discussion and Decision

I. Standard of Review

Indiana Code section 34-58-1-2(a) provides:

A [trial] court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim: (1) is frivolous; (2) is not a claim upon which

possible date supported by the record, pleadings, and briefs.

relief may be granted; or (3) seeks monetary relief from a defendant who is immune from liability for such relief.

In reviewing a dismissal of an offender's complaint pursuant to this section, we employ a de novo standard of review. Peterson v. Lambert, 885 N.E.2d 719, 720-21 (Ind. Ct. App. 2008).

Like the trial court, we look only to the well-pleaded facts contained in the complaint or petition. Id. Ind. Code section 34-58-1-2(a) is in essence a legislative interpretation of Trial Rule 12(B)(6). Id. Therefore, dismissal is only proper where it appears from the face of the complaint that the plaintiff would not be entitled to recovery under any set of facts contained in the complaint. Id. (citing Meyers v. Meyers, 861 N.E.2d 704, 706 (Ind. 2007)).

II. False Arrest and Imprisonment Claims

Guillen's complaint seeks damages for false arrest and imprisonment based on events occurring between August of 1998 and August of 2001. An action for injury to person or character must be commenced within two years after the cause of action accrues. Indiana Code § 34-11-2-4. A cause of action of a tort claim accrues when the plaintiff knew, or in the exercise of reasonable diligence could have discovered, that an injury had been sustained as a result of the tortious act of another. Johnson v. Blackwell, 885 N.E.2d 25, 30 (Ind. Ct. App. 2008).

The latest possible date for the limitations period to begin to run is August 30, 2001; therefore, Guillen needed to file his complaint no later than August 30, 2003. Guillen filed his complaint on January 18, 2008, well past the expiration of the limitations period. Although Guillen argues that his incarceration should toll the statute of limitations period, this argument cannot apply to his claims for false arrest and imprisonment. Guillen was not

incarcerated until May 13, 2004, over eight months after the limitations period had run. Therefore, the trial court properly dismissed Guillen's false arrest and imprisonment claims as barred by the statute of limitations.

III. Violation of Constitutional Rights

Guillen's complaint also seeks damages for violations of constitutional rights based on events occurring between May 14, 2005 and September 2, 2005. Although the complaint does not specify a basis for the claims nor which specific constitutional rights Guillen believes have been violated, the proper method for bringing an action for violation of constitutional rights would be through 42 U.S.C. section 1983. Section 1983 claims are subject to the statute of limitations for a personal injury. Irwin Mortg. Corp. v. Marion County Treasurer, 816 N.E.2d 439, 443 (Ind. Ct. App. 2004). Thus, Guillen's claims must have been brought within two years. See Ind. Code § 34-11-2-4.

The latest possible date for the limitations period to begin to run is September 2, 2005; therefore, Guillen need to file his complaint no later than September 2, 2007. Guillen filed his complaint on January 18, 2008, again well past the expiration of the limitations period. Guillen argues that his incarceration since May 13, 2004, should toll the statute of limitations. However, Guillen provides no authority to support his argument. Indiana Appellate Rule 46(A)(8)(a) requires that Guillen's arguments be supported by cogent reasoning and citation to authority. An issue that is not supported by cogent reasoning and citation to supporting authority is waived. Hay v. Hay, 885 N.E.2d 21, 23 n.2 (Ind. Ct. App. 2008). Additionally, incarceration is no longer classified as a legal disability that tolls the statute of limitations. See Diaz v. Carpenter, 650 N.E.2d 688, 691-92 (Ind. Ct. App. 1995)

(“Until 1982, I.C. 34-1-67-1(6) included persons ‘imprisoned in the state prison’ in its definition of the phrase ‘under legal disabilities’. This statute was repealed in 1990, however”) (citations omitted). Therefore, the trial court properly dismissed Guillen’s violation of constitutional rights claims as barred by the statute of limitations.

IV. Guillen’s Other Claims

In his statement of issues, Guillen questions whether the trial court considered all of his claims. However, Guillen does not specify any claims in addition to those discussed above that he believes the trial court omitted. In addition, the trial court’s order states: “The Court finds that the motion to proceed as a poor person should not be granted and the complaint submitted by Mr. Guillen should not proceed. Upon review by the court, there are no remaining claims which should be allowed to proceed.” Appellee’s App. at 3. Therefore, Guillen has presented no evidence that the trial court failed to address all of the claims raised in his complaint.

Conclusion

Pursuant to Indiana Code chapter 34-58-1, the trial court properly conducted a review of Guillen’s complaint. Guillen filed his complaint after the expiration of the statute of limitations for all of the claims raised in the complaint and his incarceration does not toll the running of the limitations period. Therefore the trial court properly dismissed Guillen’s complaint in its entirety.

Affirmed.

NAJAM, J., and MAY, J., concur.