IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

KEVIN HOWARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-376-SLR
	)	
ROBERT SNYDER, STAN TAYLOR, FRANCINE KOBUS, ELIZABETH BURRIS, JOHN DOE #1, JOHN DOE #2, PAUL HOWARD, MAJOR CUNNINGHAM, LESMA JONES, DOREEN WILLIAMS, C/O LASKO, WAYNE MASSEY, JOHN DOE and JANE DOE,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

The plaintiff Kevin Howard is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") located near Smyrna, Delaware. His SBI number is 148032. He filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether the plaintiff is eligible for pauper status. On June 6, 2001, the court granted plaintiff leave to proceed in forma pauperis. On August 6, 2001 the court ordered the

plaintiff to pay, within thirty days, an initial partial filing fee of $5.14. The plaintiff paid the initial partial filing fee on August 24, 2001.

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).[1] If the court finds the plaintiff's complaint falls under any one of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the Fed. R. Civ. P. 12(b)(6) standard of review. See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A). Accordingly, the court must "accept as true the factual allegations in the

[1] These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner in forma pauperis complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).[2] As discussed below, the plaintiff's claims have no arguable basis in law or fact. Therefore, his complaint shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

1. Motions for Extension of Time to Amend the Complaint

The plaintiff has filed three separate motions for an extension of time to file an amended complaint. (D.I.s 7, 11 and

[2] Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

13) The plaintiff filed his amended complaint on January 3, 2002. (D.I. 14) The plaintiff may file an amended complaint "once as a matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a). The plaintiff's complaint is subject to the screening requirements of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1). Accordingly, his complaint has not been served on the defendants. Therefore, he is free to file an amended complaint without leave of the court. Id. Furthermore, as the plaintiff has filed the amended complaint, the court will deny the motions for an extension of time as moot.

2. The Complaint

As an initial matter, the court reviews only the amended complaint filed on January 3, 2002. An amended complaint filed as a matter of course or after leave of the court supercedes the original complaint. See Young v. City of Mount Ranier, 238 F.3d 567, 572 (4th Cir. 2001) (quoting In re Crysen/Montenay Energy Co., 226 F.3d 160, 162 (2d Cir. 2000)); Hal Roach Studios, Inc. v. Richard Feiner, & Co. Inc., 896 F.2d 1542, 1546 (9th Cir. 1990); Fritz v. Standard Sec. Life Ins. Co. of New York, 676 F.2d 1356, 1358 (11th Cir. 1982); Charles Alan Wright, Arthur R. Miller & May Kay Kane, Federal Practice and Procedure § 1476 (2d ed 1990). ("A pleading that has been amended ... Supersedes the pleading it modifies .. Once an amended pleading is interposed, the original pleading no longer

performs any function in the case ...").

The plaintiff raises two separate claims alleging the violation of his First and Fourteenth Amendment right to access the courts. First, the plaintiff alleges that on August 21, 1998, defendant Lasko violated his right to access the courts by confiscating his legal and personal property. The plaintiff further alleges that defendant Burris is vicariously liable for defendant Lasko's conduct because she allowed defendant Lasko to confiscate the plaintiff's legal documents. (D.I 14 at 4-5)

Second, the plaintiff alleges that on April 28, 1999, defendant Cunningham violated his right to access the courts by directing defendants John Doe #1 and John Doe #2 to confiscate his legal material. (Id. at 5,9) The plaintiff next alleges that defendant Massey also violated his right to access the courts because he failed to properly inventory the plaintiff's property. (Id. at 11) The plaintiff further alleges that defendants Snyder and Taylor are vicariously liable for defendant Cunningham's conduct on April 28, 1999. (Id. at 5-7) In addition, the plaintiff alleges that defendant Kobus is liable for defendant Cunningham's action because she "failed to determine that the legal materials confiscated were necessary for his on-going litigation and refused to renew his authorization to have a third box of legal material. (Id. at 7-8). The plaintiff next alleges that on May 3, 1999, defendant Williams violated his

right to access the courts by failing to act on the emergency grievance the plaintiff filed regarding his confiscated property. (Id. at 8) The plaintiff also alleges that on June 10, 1999, defendants John Doe #1 and John Doe #2, as well as defendant Jane Doe refused to return his legal property even though he had authorization from Defendant Burris to have a third box for storing his legal material. (Id. at 9) Finally, the plaintiff alleges that on August 17, 2000, defendant Howard violated his right to access the courts when he failed to return his legal material. (Id. at 11) The plaintiff requests compensatory damages in the amount of $50,000 from each defendant and punitive damages in the amount of $300,000. (Id. at 12)

3. Plaintiff's Claims are Time Barred

The plaintiff's claims arising from the confiscation of his legal materials on August 21, 1998, and April 28, 1999, are time-barred by the statute of limitations. "Limitations periods in § 1983 suits are to be determined by reference to the appropriate 'state statute of limitations and the coordinate tolling rules.'" Hardin v. Straub, 490 U.S. 536, 541 (1989)(citing Board of Regents, University of New York v. Tomanio, 446 U.S. 478, 484 (1980)). However, accrual of such claims are governed by federal law. See Albright v. Oliver, 510 U.S. 266, 280 n. 6 (1994)(Ginsburg, J. concurring). The relevant state statute of limitations for a personal injury action in

Delaware is two years. See Del. CODE ANN. tit. 10 § 8119; Carr v. Dewey Beach, 730 F.Supp. 591 (D. Del. 1990).

Consequently, the plaintiff's claims would have accrued, when he knew or had reason to know of the injury that forms the basis of this action. Carr, 730 F.Supp. at 601. It is clear from the complaint that the plaintiff's claims accrued on August 21, 1998 and April 28, 1999, the dates his legal materials were confiscated. Although the plaintiff alleges that certain defendants continued to violate his rights by denying his grievances on May 3, 1999, June 10, 1999 and August 20, 2000, he can not avoid the statute of limitations regarding the second confiscation on April 28, 1999. It is the date of the original confiscation of his legal materials, not the confirmation of the action which determines when the statute of limitations begins to run. See Delaware State College v. Ricks, 449 U.S. 250, 258 (1980). The grievance process is available to "remedy past wrongs" and does not "constitute a new wrong extending the accrual date." Soignier v. American Bd. of Plastic Surgery, 92 F.3d 547, 550 (7th Cir. 1996). Consequently, the statute of limitations began to run on April 28, 1999. The plaintiff's subsequent grievances had no effect on the accrual of his claim. See Herbert v. Reinstein, 976 F.Supp. 331, 336-337 (E.D. Pa. 1999)(finding that the statute of limitations began to run on the date the disciplinary committee suspended the plaintiff from law

school, not the date the plenary faculty affirmed the suspension). Here, the plaintiff did not file his complaint until June 6, 2001, more than two years after he knew, or had reason to know of the injury that forms the basis of this action. Therefore, his claims are time barred.

Because the statute of limitations is an affirmative defense ordinarily subject to waiver, sua sponte dismissal on this ground raises concerns of procedural fairness. However, prior to the enactment of the PLRA, several federal courts concluded that in forma pauperis claims which were time-barred were properly dismissed sua sponte as frivolous under 28 U.S.C. § 1915 (d). See e.g. Gartrell v. Gaylor, 981 F.2d 254, 256 (5th Cir. 1993)("Where it is clear from the face of the complaint filed in forma pauperis that the claims asserted are barred by the applicable statute of limitations, those claims are properly dismissed pursuant to § 1915(d)"); Myers v. Vogal, 960 F.2d 750, 751 (8th Cir. 1992)("Although the statute of limitation is an affirmative defense, a district court may properly dismiss an in forma pauperis complaint under 28 U.S.C. § 1915(d) when it is apparent the statute of limitations has run.")(per curiam); Street v. Vose, 936 F.2d 38, 39 (1st Cir. 1991) (per curiam); Clark v. Georgia Pardons and Paroles Board, 915 F.2d 636, 640 n.2 (11th Cir. 1990).

With the enactment of the PLRA, § 1915(e) not only

retained the language of the former § 1915(d), it also added new provisions requiring the dismissal of in forma pauperis actions "at any time" if the district court finds the claims to be "frivolous, malicious, or for failure to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B). Thus, the courts sua sponte dismissal of clearly time-barred claims is not only appropriate, but required under the PLRA. See Johnstone v. United States, 980 F.Supp. 148, 154 (E.D. Pa. 1997)("When a complaint on its face shows that the action was filed outside of the applicable limitations period, and the court has satisfied itself that no legal rule tolls or otherwise abrogates the limitations period, sua sponte dismissal is appropriate under § 1915."). It is clear from the face of the complaint, that the plaintiff's claims were filed outside the two year limitations period and "no legal rule tolls or otherwise abrogates the limitations period." Id. Therefore, the plaintiff's claims have no arguable basis in law and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

NOW THEREFORE, IT IS HEREBY ORDERED this 11th day of March, 2002, that:

1) The plaintiff's the claims arising from the confiscation of his legal material on August 21, 1998 and April 28, 1999, are dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

2) The plaintiff's motions for extension of time to file an amended complaint (D.I.s 7, 11, and 13) are denied as moot.

3) The clerk shall mail a copy of the court's Memorandum Order to the plaintiff.

Sue L. Robinson
United States District Judge