

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RANDALL E. HILL, III, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 02-250 GMS  
 )  
 UNITED STATES DEPARTMENT OF )  
 JUSTICE, *et al.*, )  
 )  
 Defendants. )

**MEMORANDUM AND ORDER**

**I. INTRODUCTION**

On April 4, 2002, the plaintiff, Randall E. Hill, III (“Hill”), acting *pro se*, filed the above-captioned action against numerous defendants, including the United States Department of Justice, ex-girlfriends, his former lawyer, and various other people and entities who came into contact with him in the late 1980s and early 1990s. In essence, he alleges that these defendants knew he was committing illegal acts, and because they did not stop him, he was “entrapped” and subsequently prosecuted.

Presently before the court are the United States’ and Edmund Lyons’ (“Lyons”) motions to dismiss. For the following reasons, the court will grant both motions to dismiss and will also dismiss the action against each of the remaining defendants.<sup>1</sup>

**II. STANDARD OF REVIEW**

The purpose of a motion to dismiss is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the case. *See Kost v. Kozakiewicz*, 1 F.3d 183 (3d Cir. 1993).

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<sup>1</sup>A review of the docket report reveals that Hill has failed to timely serve several of the defendants. The court will not, however, afford Hill an opportunity to effectuate proper service in light of its determination that the underlying action cannot be maintained.

Thus, in deciding a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court must “accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them.” *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir.1990). In particular, the court looks to “whether sufficient facts are pleaded to determine that the complaint is not frivolous, and to provide defendants with adequate notice to frame an answer.” *Colburn v. Upper Darby Tp.*, 838 F.2d 663, 666 (3d Cir.1988). However, the court need not “credit a complaint’s ‘bald assertions’ or ‘legal conclusions’ when deciding a motion to dismiss.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3rd Cir.1997). The court will only dismiss a complaint if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249-50 (1989) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)). Thus, in order to prevail, a moving party must show “beyond doubt that the plaintiff can prove no set of facts in support of his claim [that] would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

### **III. BACKGROUND**

In his complaint, Hill alleges that the United States Attorney’s Office violated laws, regulations, and ethical standards in contravention of the due process clause during his criminal prosecution for embezzlement.<sup>2</sup> He also claims that numerous other defendants violated his civil rights in connection with his prior criminal prosecution.

Hill characterizes the illegal activity for which he was prosecuted as “cashing checks.” He argues that the prosecutor knew, or should have known, of his actions from the time he deposited

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<sup>2</sup>While it is not clear from the complaint, it appears that the criminal prosecution to which Hill refers is *United States v. Hill*, 88-cr-10 (JJF).

the first check. According to Hill, because so many people knew of his activities, his drug addiction, and the subsequent criminal investigation, they each had a duty to stop him before he was prosecuted. As supporting evidence for this theory, Hill points out that bank cameras videotaped him depositing the first check. Thus, each subsequent time he deposited a check, he was “entrapped” because nobody stopped him. He also appears to be asserting a malpractice claim against his former attorney, Lyons, on the grounds that Lyons failed to advise him that the United States could have stopped his illegal activity earlier but chose not to.

He further states that he was interrogated without being advised of his rights, and without representation, by both the police and bank security. Additionally, although he does not identify any particular sealed documents, he states that he was not told about such documents. Accordingly, he alleges that he is innocent of any crime, and was “railroaded.” Following his conviction, Hill spent eighteen months of a five-year sentence in Robert F. Kennedy Center, Morgantown, West Virginia.<sup>3</sup>

Once incarcerated, Hill alleges that no one at FCI Morgantown would come forward with the “new evidence” in his criminal case.<sup>4</sup> This also led to his entrapment. Finally, he contends that police officers impermissibly questioned him about his drug dealer’s murder while he was incarcerated.

Hill was released from FCI Morgantown in 1991.

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<sup>3</sup>This prison is more properly identified as the Bureau of Prisons Facility, FCI Morgantown.

<sup>4</sup>It is unclear to what “new evidence” Hill refers.

#### IV. DISCUSSION<sup>5</sup>

##### A. Hill's Criminal Conviction

The crux of Hill's complaint is that he is innocent of any criminal wrongdoing and intends to use this lawsuit to clear his name. *See* Complaint (D.I. 21) at 1, 2, 3, 5, 38. For the following reasons, however, the court holds that Hill is barred from bringing a civil action to overturn a criminal conviction or sentence.

With respect to suits challenging actions leading to arrest and conviction, the Supreme Court's decision in *Heck v. Humphrey* is dispositive. 512 U.S. 477 (1994). In that case, the Court held that,

in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a plaintiff must prove . . . that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.

*Id.* at 486-87. The Court continued, "a claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983." *Id.* at 487. Thus, a plaintiff who cannot show that his conviction or sentence was "reversed, expunged, invalidated, or impugned" has "no cause of action." *Id.* at 489. In considering whether a claim for damages bears a relationship to the prior conviction or sentence which has not been invalidated, the court must consider whether a judgment in favor the plaintiff would necessarily imply the invalidity of his

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<sup>5</sup>The court recognizes that Hill has filed two motions for appointment of counsel. While the court would normally consider those motions prior to addressing a motion to dismiss, the court finds for the reasons stated below that the appointment of counsel would be futile in this case. It will, therefore, dismiss the motions as moot.

conviction or sentence. *See id.* at 487.

Here, as the court noted earlier, Hill expressly proclaims his innocence and asks the court to overturn his conviction and grant him a new trial. *See* Complaint (D.I. 21) at 3, 10. However, as he has not alleged that his criminal conviction has been reversed, expunged, or invalidated, he has failed to state a claim.

#### **B. Statute of Limitations**

Additionally, the court concludes that Hill's complaint is barred by the applicable statute of limitations. The timeliness of a Section 1983 action must be determined in accordance with the relevant state limitations period for personal injury actions.<sup>6</sup> *See Wilson v. Garcia*, 471 U.S. 261, 279 (1985). In this case then, the timeliness issue turns on Delaware's two year personal injury statute of limitations. *See* 10 DEL C. § 8119; *see also Carr v. Dewey Beach*, 730 F. Supp. 591 (D. Del. 1990). The period begins to run when the injury is sustained, not when the full extent of the injury is known. *See Chrisco v. Schafran*, 525 F. Supp. 613 (D. Del. 1981).

Although state law determines the applicable limitations period, federal law determines the date of accrual. *See Deary v. Three Unnamed Police Officers*, 746 F.2d 185, 197, n.16 (3d Cir. 1984). Accordingly, the Third Circuit Court of Appeals has held that a claim accrues when a plaintiff knows or has reason to know of the injury which was the basis for his cause of action. *See id.*

In the present case, Hill's complaint details a litany of alleged harms beginning in 1983 and continuing through his release from incarceration in 1991. Specifically, he focuses on his May

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<sup>6</sup>Furthermore, with respect to Hill's allegations against Lyons, even were the court to construe his complaint as alleging a state law breach of contract action, the statute of limitations for contractual actions in Delaware is three years. *See* 10 DEL. C. § 8106.

1988 conviction and his actions leading up to that conviction. However, if Hill had, in fact, been entrapped at that time, knowing himself to be innocent of the crime for which he was convicted, the two year statute of limitations has clearly passed. He further states that he served eighteen months of a five year sentence. Thus, it has been more than ten years since he was released from prison. Even if he could not have discovered these alleged facts while incarcerated, his time would have accrued, at the latest, upon his release from prison in 1991. Therefore, even giving Hill the benefit of a generous interpretation of his accrual date, his claims are well beyond the two year statute of limitations and must be dismissed.<sup>7</sup>

### **C. Sovereign Immunity**

As an additional ground for dismissing the United States from this action, the court notes that Hill's complaint is barred as to these defendants by the doctrine of sovereign immunity.

The United States, as a sovereign, is immune from suit except as it consents to be sued. The terms of the consent frame the parameters of a federal court's jurisdiction to entertain suits brought against the sovereign. *See FDIC v. Meyer*, 510 U.S. 471, 475 (1994). A waiver of sovereign immunity cannot be implied, but must be construed strictly in favor of the government and not enlarged beyond the statutory language authorizing it. *See Jaffee v. United States*, 592 F.2d 712, 717 (3d Cir. 1979). If a waiver exists, it must be found in the statute giving rise to the cause of action. *See id.* at 718.

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<sup>7</sup>Additionally, with regard to the federal defendants, under the Federal Tort Claims Act, a plaintiff must file a federal agency claim within two years after such claim accrues prior to bringing a lawsuit. *See* 28 U.S.C. §§ 2401(a), (b) and 2675(a). Hill does not allege that he filed a claim with the agency whose activities gave rise to the claim. This failure to file further defeats Hill's lawsuit against the United States and its agencies. *See Bialowas v. United States*, 443 F.2d 1047, 1050 (3d Cir. 1971) (noting that courts lack jurisdiction if a proper claim is not made).

The Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671 *et seq.*, defines the limits of the federal government’s waiver of sovereign immunity and provides, in part that, “the United States shall be liable, respecting the provisions of this title relating to tort claims . . . .” 28 U.S.C. § 2674. The FTCA further affords the exclusive remedy for injuries “arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment . . . .” *See* 28 U.S.C. § 2679(b)(1).

In the present case, the court must conclude that Hill has not properly alleged the elements of any tort. As best as can be discerned from his complaint, he is alleging entrapment. Entrapment, however, provides a legal defense to defendants in connection with criminal charges against them which negates the intent to commit the crime. *See e.g. Mathews v. United States*, 485 U.S. 58, 62-63 (1988). Additionally, to the extent that Hill intends to show that he was entrapped in order to allege a constitutional due process violation for purposes of an FTCA claim, such an argument must also fail because the United States has not waived its sovereign immunity as to constitutional tort suits.<sup>8</sup> *See Jaffee*, 592 F.2d at 715-718.

For these reasons, the court concludes that Hill’s complaint is barred as to the United States on sovereign immunity grounds as well.

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<sup>8</sup>The court will assume *arguendo* that Hill’s claims do in fact rise to the level of a constitutional tort. To the extent that his claim is better interpreted as one for false imprisonment, false arrest, abuse of process, or malicious prosecution, these claims are exempted from the coverage of the FTCA. *See* 28 U.S.C. § 2680(h). Although such claims may be brought against “law enforcement officers,” Assistant United States Attorneys acting within the scope of their prosecutorial duties are not considered “law enforcement officers” for the purpose of that limited coverage. *See e.g. Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976).

**V. CONCLUSION**

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The United States' Motion to Dismiss (D.I. 51) is GRANTED;
2. Lyon's Motion to Dismiss (D.I. 63) is GRANTED;
3. Each of the defendants in the above-captioned action is dismissed;
4. Hill's Motion for Appointment of Counsel (D.I. 47) is dismissed as MOOT;
5. Hill's Renewed Motion for Appointment of Counsel (D.I. 57) is dismissed as MOOT;
6. Hill's Motion for All Documents to be Unsealed by the New Castle County Police (D.I. 48) is declared MOOT;
7. Hill's Motion for Pre-Discovery Material (D.I. 50) is declared MOOT;
8. Hill's Motion for Leave to View All Documents (D.I. 56) is declared MOOT; and
9. The Clerk of the Court is directed to close this case.

Dated: July 7, 2003

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE