

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	Civil Action Number: 2020-CP-36-00506
Terence L. Rush,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
Michael B. Stribble, Individually and in	)	
his Official capacity as Sergeant at the	)	
Newberry County Sheriff's Office,	)	
	)	
Defendant.	)	

This matter came before the Court on a Motion to Dismiss filed by Defendant on March 10, 2021. In lieu of a hearing, the Court has considered the arguments presented through the parties' briefs and the entirety of the records before this Court, including all filings made by all parties. The Court finds that Plaintiff's claims against Defendant must be dismissed as a matter of law, as is set out in detail herein, and that Defendant's pending motion must be, and hereby is, **GRANTED.**

Plaintiff Terrence L. Rush, proceeding *pro se*, filed this action on November 16, 2020. In his Complaint, Plaintiff sets forth allegations that appear to allege Defendant used improper methods in arresting Plaintiff on October 15, 2015. This stems from his allegations that Defendant claimed to have an arrest warrant for a "Corey Pena." Plaintiff denied being "Corey Pena" and gave Defendant and other uniformed officers a false name. Eventually, Plaintiff allowed Defendant to scan his finger, allowing Defendant to learn Plaintiff's true identity and that he was wanted for attempted murder in Florida. At that point, he was arrested and subsequently issued a ticket for providing false information from police. Plaintiff was then transported to the Newberry County Detention Center and then to Florida on a Fugitive from

Justice Warrant issued by a Newberry County Magistrate. Plaintiff then filed this subject lawsuit and attempts to bring a claim of “Fraud” against Defendant. Defendant has moved for dismissal of Plaintiff’s claims, asserting Defendant is an improper party in this action, that Plaintiff’s claims are barred by the applicable statute of limitations, and that punitive damages and attorney’s fees are barred by the South Carolina Tort Claims Act.

DISCUSSION

1. Plaintiff’s Complaint is barred by the two-year Statute of Limitations provided in the South Carolina Tort Claims Act.

Initially, Plaintiff’s claims are barred by the applicable Statute of Limitations. Because this action is brought against an employee of the Sheriff of Newberry County, it is governed by the South Carolina Tort Claims Act (“Tort Claims Act”). The Tort Claims Act “constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.” S.C. Code Ann. § 15-78-70(a). Under the Tort Claims Act, the statute of limitations for suit against a state agency or its employees is two years after the “date the loss was or should have been discovered.” S.C. Code Ann. § 15-78-110. If the action is not brought within the required statute of limitations it is “forever barred.” *Id.*

A loss should be discovered when the “circumstances would put a person of common knowledge and experience on notice that some right has been invaded, or that some claim against another party might exist.” *Joubert v. DSS*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). “The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of [the] wrongdoer.” *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994).

In this case, Plaintiff was arrested on October 2, 2015 for being a fugitive from justice and for providing false information to police. The second charge stems from Defendant’s

attempt to serve an arrest warrant on a “Corey Pena” on Plaintiff and asking him for his identity. When asked by officers his name, he told them he was “Alfred T. Jackson.” Plaintiff does not deny that he gave Defendant the wrong identity when first asked to identify himself or dispute the validity of the arrest warrant. At the time of Plaintiff’s arrest on October 2, 2015, he knew that he was not “Corey Pena” so any alleged discovery of “fraud” some five years after his arrest is without merit. Plaintiff did not need to see a photograph of “Corey Pena” to determine that he was not “Corey Pena” so any argument to the contrary fails.

Plaintiff’s cause of action in this case is “fraud” and the allegations are solely related to the arrest on October 2, 2015. Any injury due to the alleged actions of Defendant were discovered by Plaintiff on that date. Plaintiff initiated this action on November 16, 2020, more than five years after the date he was arrested and three years past the running of the two-year statute of limitations provided for in the Tort Claims Act. The Court, therefore, finds that Plaintiff’s claims are barred by the statute of limitations and should be dismissed.

2. Defendant is not a proper party pursuant to S.C. Code Ann. § 15-78-10¹

The Tort Claims Act, S.C. Code Ann., § 15-78-10, *et seq.*, provides various immunities for employees of governmental actors. Chief among these immunities is the absolute immunity provided to individual employees contained within S.C. Code Ann., § 15-78-70. Pursuant to subsection 15-78-70(a), individual employees are not subject to suit as personal defendants for the alleged tort claims committed within the course and scope of their employment.

Plaintiff named Defendant Michael B. Stribble as an individual defendant in this case. The record reflects that Defendant was employed by the Sheriff of Newberry County at the time of the incident. Pursuant to Section 15–78–70(a), individuals who qualify as employees are not

¹ Even if Plaintiff had named the proper party (Sheriff of Newberry County), his claims would still be barred by the statute of limitations.

subject to suit as personal defendants for the alleged tort claims committed within the course and scope of their employment. While Plaintiff alleges in his Complaint that Defendant “acted in bad faith” and outside the course and scope of his employment during Plaintiff’s arrest, the Court finds those arguments unavailing. The record is clear that Plaintiff gave false information to law enforcement personnel, including Defendant, when he identified himself as “Alfred T. Jackson”. Plaintiff does not deny this allegation. The Court finds this action by Plaintiff to be telling and shows that if any falsity was committed that day, it was by Plaintiff, not Defendant. Therefore, Defendant is also entitled to be dismissed on this ground as well.

CONCLUSION

Therefore, the Court finds that Defendant’s Motion to Dismiss is **GRANTED**, and Plaintiff’s Complaint must be, and hereby is, **DISMISSED WITH PREJUDICE**².

AND IT IS SO ORDERED

The Honorable Donald B. Hocker
Presiding Circuit Court Judge

_____, 2021

Laurens, South Carolina

² Defendant also asserted a third ground in his motion regarding punitive damages and attorney’s fees. The Court finds that the plain language of § 15-78-120 bars these types of damages. Since the Court has found that Plaintiff’s claims must be dismissed, these portions of the Complaint would be stricken as well, but no further ruling or analysis is needed.



Newberry Common Pleas

Case Caption: Terence L Rush VS Michael B Stribble , defendant, et al

Case Number: 2020CP3600506

Type: Order/Dismissal

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167