

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TERRELL MCCOY, #256070,

Plaintiff,

v.

NORTH CHARLESTON POLICE
DEPARTMENT AND SERGEANT
THOMAS DECKARD,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-7706

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SC Court of Appeals

DEFENDANTS' MOTION
TO DISMISS

FILED
2015 MAR 30 PM 3:38
JULIE J. ARMSTRONG
CLERK OF COURT

Before the court are the defendants, moving to dismiss the plaintiff's Complaint which alleges that in 2006, exculpatory evidence was destroyed by the North Charleston Police Department and Sergeant Thomas Deckard¹ in an effort to improperly convict him. The plaintiff's Complaint has been untimely filed and should be dismissed pursuant to the statute of limitations. Further, Sergeant Deckard should be dismissed as he is not a proper defendant pursuant to the South Carolina Tort Claims Act ("TCA"), § 15-78-10, *et seq.*

The plaintiff has brought this action pursuant to the TCA, which states that "any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered." S.C. Code Ann. § 15-78-110.

In this case, the plaintiff claims that he was arrested on March 27, 2006, and appointed Lorelle Proctor as his public defender. The Complaint further alleges that Prosecutors Greg Voigt and Burns Wetmore both worked on the case for the solicitor's office.

The plaintiff complains that exculpatory evidence (a 911 tape) was not turned over to his

¹ As of the date of this motion, Sergeant Thomas Deckard has not been personally served with this lawsuit.

attorney because it was destroyed before production. However, the complaint further alleges that through recent Freedom of Information Act requests, he believes that the tape was destroyed on June 25, 2006, which was more than two months after his lawyer had apparently requested the 911 tape.

Thus, the plaintiff now believes that he can pinpoint a date on which the 911 tape was destroyed. Such is not a salient fact. From the four corners of his complaint, it is revealed that he knew that the police and prosecutors did not have a 911 tape to present to his attorney many years ago. And, even assuming that the plaintiff's complaint is true, it would appear that both he and his attorney actually argued motions regarding the 911 tape prior to his conviction. On February 2, 2009, the plaintiff claims that he argued before the Honorable Roger Young that he should be entitled to the 911 tape and at that point the solicitor's office told the judge that they did not have a 911 tape and that it had been destroyed apparently as part of a retention schedule.

Inasmuch as the plaintiff and his public defender argued for the production of the 911 tape at trial, clearly the plaintiff knew that a piece of evidence was not going to be produced by February 2, 2009. Therefore, this complaint is untimely as being filed outside the two-year statute of limitations.

Further, pursuant to the TCA:

On or after January 1, 1989, a person when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant **only the agency or political subdivision for which the employee was acting ... in the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.**

S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also Proveaux v. Med. Univ. of S.C.*, 326

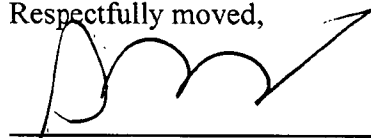
S.C. 28, 482 S.E.2d 774 (1997) (granting summary judgment to hospital employee based on his

being immune from suit under S.C. Code Ann. § 15-78-70(c)).

At all times relevant to the allegations in the Complaint, Sergeant Deckard was an employee of the North Charleston Police Department acting in his capacity as a detective. Therefore, Sergeant Deckard is not a proper defendant and should be dismissed from this action.

Wherefore, for the foregoing reasons, the Complaint should be dismissed, and in the alternative and at the very least, Sergeant Deckard should be dismissed from this suit.

Respectfully moved,



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Attorney for the Defendants

March 27, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TERRELL MCCOY, #256070,

Plaintiff,

v.

NORTH CHARLESTON POLICE
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CERTIFICATE OF MAILING

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JULIE J. ARMSTRONG
CLERK OF COURT

I hereby certify that I, Kevin M. DeAntonio, have caused a copy of Defendants' Motion to Dismiss to be deposited in the mail with postage pre-paid and affixed thereto, addressed as follows to the *pro se* plaintiff in the above-captioned proceeding, this 27th day of March, 2015.

Mr. Terrell L. McCoy, #256070
Broad River Correctional Institution
Murray #225
4460 Broad River Road
Columbia, South Carolina 29210



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March 27, 2015

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

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MAR 28 2016

SC Court of Appeals

RE: Terrell McCoy v. City of North Charleston
Case No.: 14-CP-10-07706

Dear Julie:

Please find enclosed for filing the original and two (2) copies of Defendants' Motion to Dismiss in the above-referenced matter. If you would, please clock-in the additional copies and return them to me in the enclosed self-addressed stamped envelope. As noted by the attached Certificate of Service, the *pro se* plaintiff is being served with a copy of this responsive pleading on today's date

With kind regards, I am,

Sincerely,


Sandra J. Senn

mbk

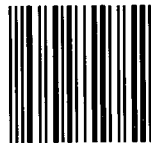
Enclosure

cc: Mr. Terrell McCoy, *Pro Se*

Terrill McCoy
BRCI Marion #149
4460 Broad River rd.
Columbia S.C. 29210



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