

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LAMBERT ROBERTS,

96 CV 3210
ORDER

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF CORRECTIONS,
MICHAEL GASTINE, Warden, CASABLANCA,
Corrections Officer, Shield #9830,

Defendants.

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LAMBERT ROBERTS
#96-R-3686
Franklin Correctional Facility
P.O. Box 10, Bare Hill Road
Malone, NY 12953

PAUL A. CROTTY
(Jennifer Causing, of counsel)
Corporation Counsel
100 Church Street
New York, New York 10007
for defendants.

NICKERSON, District Judge:

Lambert Roberts brings this pro se action pursuant
to 42 U.S.C. § 1983 against the New York City
Department of Corrections, Warden Michael Gastine, and

Corrections Officer Casablanca for allegedly using excessive force against him while he was incarcerated. Plaintiff has moved for summary judgment, and the defendants have cross-moved for partial summary judgment.

I

Plaintiff filed the complaint in this case on June 28, 1996, alleging that defendants used excessive force against him while he was incarcerated in the ARDC facility on Riker's Island. Plaintiff claims that on June 2, 1996, as he was returning to the inmate area after a visit, he was pat frisked by an officer. After the frisk, defendant Casablanca ordered plaintiff to remove his sneakers. According to plaintiff, Officer Casablanca then called him a "bitch" and pushed him with both hands, forcing him backwards. Plaintiff alleges that he defended himself, and four corrections officers responded by beating him with their fists and kicking him repeatedly.

Plaintiff asserts federal and state claims. He says that he was subjected to cruel and unusual punishment, assault and battery, and intentional infliction of emotional distress.

II

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine issue as to any material fact and that [it] is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). Uncertainty regarding the truth of any alleged material fact will defeat a summary judgment motion. United States v. One Tintoretto Painting, 691 F.2d 603, 606 (2d Cir. 1982).

Plaintiff's motion for summary judgment simply reiterates plaintiff's version of the facts, which is hotly disputed by the defendants. The motion contains no argument concerning why plaintiff is entitled to judgment as a matter of law. Plaintiff has not sustained his burden of showing that the facts are not

in dispute. His motion for summary judgment is denied.

III

Defendant cross-moves for summary judgment on plaintiff's state law claims of assault, battery and intentional infliction of emotional distress.

New York General Municipal Law §§ 50-i provides that a plaintiff cannot bring a state law tort claim against a municipal entity or its employees until he has filed a notice of claim against the City. Under New York General Municipal Law §§ 50-e, the notice of claim must be filed within ninety days of the occurrence giving rise to the claim. A federal court lacks the jurisdiction to waive the notice requirements of Gen. Mun. Law §§ 50-e and 50-i or to grant leave to file a late notice of claims for pendant state tort claims. N.Y. Gen. Mun. Law § 50-e(7).

The events of which plaintiff complains are alleged to have occurred on June 2, 1996. Plaintiff did not file the notice of claim required to bring a

state action within ninety days of the occurrence, and any notice of claim filed at this late date would be untimely. The Court grants summary judgment in favor of the defendants as to plaintiff's state law claims of assault, battery and intentional infliction of emotional distress.

IV

Plaintiff's motion for summary judgment is denied. Defendants' cross-motion for partial summary judgment is granted.

So ordered.

Dated: Brooklyn, New York
April 1, 1998

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.