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734 Fed.Appx. 787

This case was not selected for

publication in West's Federal Reporter.

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1.

WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

United States Court of Appeals, Second Circuit.

Hubert THOMPSON, Plaintiff-Appellant,

v.

James C. ROVELLA, Chief of Police, City of Hartford, In His Official Capacity, Anthony Kozieradzki, Liam Pesce, Sergeant, City of Hartford, In His Individual and Official Capacities, Tuyen Bergenholtz, Officer, City of Hartford, In Her Individual and Official Capacities, City of Hartford, Defendants-Appellees, Jane Doe / John Doe, Supervisor, Crimes Against Persons Unit, City of Hartford, In Her / His Individual and Official Capacities, Jane Doe(s) / John Doe(s), Evidence Officer(s) (2003–2014), City of Hartford, In Their Individual Capacities, Defendants.

No. 17-3152-cv

|

May 30, 2018

Synopsis

Background: Following release from prison after DNA evidence matched a different person, arrestee filed § 1983 claim for wrongful arrest against city and police department. The United States District Court for the District of Connecticut, [Vanessa L. Bryant, J.](#), dismissed the claim based on statute of limitations, and arrestee appealed.

Holdings: The Court of Appeals held that:

[1] statute of limitations accrued on date on which all charges were dismissed, and

[2] alleged wrongful withholding of exculpatory DNA information during pendency of arrestee's appeals and habeas petitions did not equitably toll statute of limitations.

Affirmed.

West Headnotes (3)

[1] Federal Courts

🔑 Failure to mention or inadequacy of treatment of error in appellate briefs

170B Federal Courts

170BXVII Courts of Appeals

170BXVII(K) Scope and Extent of Review

170BXVII(K)5 Waiver of Error in Appellate Court

170Bk3733 Failure to mention or inadequacy of treatment of error in appellate briefs

Arrestee appealing dismissal of his § 1983 claims against city and police department raised no arguments in his brief separately challenging the district court's dismissal of his state law claims, and thus abandoned any such claims. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[2] Limitation of Actions

🔑 Liability of municipality or public officers

Limitation of Actions

🔑 Civil rights

241 Limitation of Actions

241II Computation of Period of Limitation

241II(A) Accrual of Right of Action or Defense

241k58 Liabilities Created by Statute

241k58(2) Liability of municipality or public officers

[241 Limitation of Actions](#)[241II Computation of Period of Limitation](#)[241II\(F\) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action](#)[241k95 Ignorance of Cause of Action](#)[241k95\(15\) Civil rights](#)

Three year Connecticut statute of limitations on arrestee's § 1983 claim against city and police department alleging wrongful arrest accrued on date on which all charges were dismissed against arrestee, who previously had been released from prison and had conviction vacated based on DNA testing, rather than on later date when, in connection with claim for compensation, he received a letter from the Connecticut Office of the Attorney General informing him that the State's Attorney's Office had opined that dismissal of the criminal charges had been "consistent with innocence"; once all charges were dismissed, there was no longer any existing criminal conviction that could be called into question by § 1983 action, and letter regarding claim for compensation was part of separate civil proceeding. [42 U.S.C.A. § 1983](#).

[Cases that cite this headnote](#)[Cases that cite this headnote](#)

***788** Appeal from a judgment of the United States District Court for the District of Connecticut ([Vanessa L. Bryant, Judge](#)).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment entered on February 21, 2017, is AFFIRMED.

[Attorneys and Law Firms](#)

APPEARING FOR APPELLANT: [RACHEL M. BAIRD](#), Esq., Harwinton, Connecticut.

APPEARING FOR APPELLEES: [DANIEL J. KRISCH](#) ([James J. Szerejko](#), on the brief), Halloran & Sage LLP, Hartford, Connecticut, for Anthony Kozieradzki, Liam Pesce, and Tuyen Bergenholtz. [NATHALIE FEOLA-GUERRIERI](#), Senior Assistant Corporation Counsel, Office of the Corporation Counsel, City of Hartford, Hartford, Connecticut, for James C. Rovella and City of Hartford.

PRESENT: [ROBERT D. SACK](#), [REENA RAGGI](#), Circuit Judges, [LEWIS A. KAPLAN](#), District Judge. *

[3] Limitation of Actions[🔑 Suspension or stay in general; equitable tolling](#)[241 Limitation of Actions](#)[241III Computation of Period of Limitation](#)[241III\(G\) Pendency of Legal Proceedings, Injunction, Stay, or War](#)[241k104.5 Suspension or stay in general; equitable tolling](#)

City's and police department's alleged wrongful withholding of exculpatory DNA information during the pendency of arrestee's appeals and habeas petitions did not equitably toll three year Connecticut statute of limitations on arrestee's § 1983 claim against city and police department alleging wrongful arrest, as statute of limitations did not begin to run until DNA information was revealed, which led to arrestee's release from prison and dismissal of charges. [42 U.S.C.A. § 1983](#).

SUMMARY ORDER

[1] Plaintiff Hubert Thompson appeals from the dismissal of his complaint, brought pursuant to [42 U.S.C. § 1983](#) and state law, against the City of Hartford and current and former members of the Hartford Police Department for damages sustained in the course of his arrest and now-vacated 1998 conviction for sexual assault and kidnapping. Thompson further appeals the denial of his motion for reconsideration, challenging the district court's dismissal of his § 1983 claims as untimely.¹ We review *de novo* the dismissal of a complaint pursuant to [Fed. R. Civ. P. 12\(b\)\(6\)](#), "accepting all factual allegations as true and drawing all reasonable inferences in favor of the plaintiff." *Trustees of Upstate N.Y. Eng'rs Pension Fund v. Ivy Asset Mgmt.*, 843 F.3d 561, 566 (2d Cir. 2016). We review the denial of a motion for reconsideration for abuse of discretion. See *Trikona Advisers Ltd. v. Chugh*, 846 F.3d 22, 29 (2d Cir. 2017). In applying these principles here, we

assume the parties' familiarity with the underlying facts and procedural history of the case, which we reference only as necessary to explain our decision to affirm.

1. [Section 1983](#) Statute of Limitations

The statute of limitations applicable to [§ 1983](#) claims is “borrowed” from that “for [*789](#) the analogous claim under the law of the state where the cause of action accrued, which in Connecticut is three years.” [Spak v. Phillips](#), 857 F.3d 458, 462 (2d Cir. 2017) (internal citations omitted). Nevertheless, “the accrual date of a [§ 1983](#) cause of action is a question of federal law that is *not* resolved by reference to state law.” [Smith v. Campbell](#), 782 F.3d 93, 100 (2d Cir. 2015) (emphasis in original) (internal quotation marks omitted). For [§ 1983](#) claims sounding in malicious prosecution, “the statute of limitations begins to run when the prosecution terminates in the plaintiff’s favor,” which occurs when “the prosecution against the plaintiff has conclusively ended,” such that “the underlying indictment or criminal information has been vacated and cannot be revived.” [Spak v. Phillips](#), 857 F.3d at 462, 464 (alteration and internal quotation marks omitted). For [§ 1983](#) claims premised on false arrest, such claims accrue “at the time the claimant becomes detained pursuant to legal process.” [Wallace v. Kato](#), 549 U.S. 384, 397, 127 S.Ct. 1091, 166 L.Ed.2d 973 (2007). The latter occurred here at least by the time of Thompson’s trial in 1998.

[2] After conviction, however, DNA testing revealed that DNA recovered from evidence in Thompson’s case matched that of another person. Accordingly, Thompson was released from prison on March 12, 2012, his conviction was vacated, and a new trial was ordered. On July 19, 2012, all charges against Thompson were dismissed. Viewing these facts most favorably to Thompson, “the underlying criminal action” against him had been “conclusively terminated” by at least July 19, 2012, [Murphy v. Lynn](#), 53 F.3d 547, 548 (2d Cir. 1995); see [Spak v. Phillips](#), 857 F.3d at 464, such that the statute of limitations on his [§ 1983](#) claims started to run no later than July 19, 2012. His complaint, filed more than three years later on November 25, 2015, was therefore untimely.

In urging otherwise, Thompson relies on [Heck v. Humphrey](#), 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), to argue that his [§ 1983](#) claims did not accrue until January 2, 2014, when—in connection with his claim for compensation from the State of Connecticut for

wrongful incarceration, see [Conn. Gen. Stat. § 54-102uu](#)—he received a letter from the Connecticut Office of the Attorney General informing him that the State’s Attorney’s Office had opined that dismissal of the criminal charges had been “consistent with [his] innocence” and, “[a]ccordingly, the State [would] not be contesting that aspect” of the compensation claim, App’x 61 (internal quotation marks omitted). Thompson’s reliance on [Heck](#) is misplaced.

In [Heck](#), the Supreme Court ruled that when “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction,” a [§ 1983](#) action cannot be maintained “unless the plaintiff can demonstrate that the conviction ... has already been invalidated.” [Heck v. Humphrey](#), 512 U.S. at 487, 114 S.Ct. 2364. In those circumstances, “until the conviction ... has been invalidated,” accrual of such [§ 1983](#) claims is delayed. *Id.* at 490, 114 S.Ct. 2364. Both the Supreme Court and this court, however, have made clear that [Heck](#)’s delayed accrual rule comes into play only when “resolution of [an] action in a plaintiff’s favor could not be reconciled with an *extant* criminal conviction.” [Smith v. Campbell](#), 782 F.3d at 101 (emphasis added); see [Wallace v. Kato](#), 549 U.S. at 393, 127 S.Ct. 1091 (stating “[Heck](#) rule for deferred accrual is called into play only when there exists a conviction or sentence that has *not* been invalidated, that is to say, an outstanding criminal judgment” (emphasis in original) (alteration and internal quotation marks omitted)). Here, once [*790](#) all charges against Thompson were dismissed on July 19, 2012, by which time he had already been released from prison, there was no longer any existing criminal conviction that could be called into question by his [§ 1983](#) action.

The Attorney General’s 2014 letter was not, as Thompson asserts without citation to any supporting authority, “[t]he last event in the criminal proceeding” against him. Appellant Br. at 14. Rather, the letter was issued in connection with a separate *civil* proceeding following the favorable termination of his criminal prosecution. *Cf.* [Spak v. Phillips](#), 857 F.3d at 466 (rejecting argument that [§ 1983](#) claims accrued not upon entry of *nolle prosequi* but upon subsequent erasure of records pursuant to Connecticut administrative statute). Even if Thompson could not satisfy state law requirements for compensation until receipt of the letter, those requirements have no bearing on the instant federal claims. [DiBlasio v. City of New York](#), 102 F.3d 654 (2d Cir. 1996), supports

no different conclusion. See *id.* at 656–57 (affirming dismissal of § 1983 malicious prosecution cause of action “for failure to state a claim” because favorable termination “element[]” of “common law tort for malicious prosecution” not adequately alleged). In stating there that the disposition of a criminal case must be consistent with innocence to support a § 1983 claim for malicious prosecution, this court was addressing the favorable termination requirement that is a *substantive* element of the claim, see *id.* at 657–59, which is distinct from favorable termination for purposes of *accrual*, see *Spak v. Phillips*, 857 F.3d at 462–63. In sum, the authorities cited by Thompson do not support his argument that his complaint is timely.

2. Equitable Tolling

Alternatively, Thompson argues that, because “exculpatory information was wrongfully withheld” by defendants, he is entitled to equitable tolling. Appellant Br. at 21. We review the district court’s denial of equitable tolling for abuse of discretion, see *A.Q.C. ex rel. Castillo v. United States*, 656 F.3d 135, 144 (2d Cir. 2011), which we do not identify here.

To secure equitable tolling, Thompson had to establish (1) diligent pursuit of his rights, and (2) extraordinary circumstances standing in the way of timely filing. See *Watson v. United States*, 865 F.3d 123, 132 (2d Cir. 2017). Thompson cannot carry this burden.

[3] Even if defendants wrongfully withheld exculpatory DNA information during the pendency of Thompson’s appeals and habeas petitions, Thompson does not argue that any such information was still withheld once the criminal charges against him were dismissed and the

statute of limitations began to run. Nor could he. The complaint itself alleges that, by the time the charges were dismissed, DNA testing had been conducted and revealed a match for a known felon, leading to Thompson’s release from incarceration. Because the statute of limitations did not begin to run until the allegedly withheld exculpatory DNA information was revealed, Thompson cannot show that the withholding of information “*caused* him to miss the original filing deadline.” *Id.* (emphasis in original) (internal quotation marks omitted).

That conclusion is reinforced, as the district court noted, by Thompson’s filing of his state compensation claim for wrongful incarceration on August 3, 2012, only weeks after the dismissal of criminal charges against him. Thompson offers no explanation as to why defendants’ withholding of exculpatory information would have prevented him from filing the instant action within three years of dismissal of *791 the criminal charges, but did not prevent him from filing the state claim. Cf. *id.* (rejecting equitable tolling argument in civil action against government where asserted grounds for tolling “did not inhibit” plaintiff from “mount[ing] a vigorous case” in “immigration proceeding based on identical facts”). Accordingly, we identify no error in the denial of tolling.

3. Conclusion

We have considered Thompson’s other arguments and conclude that they are without merit. Accordingly, we AFFIRM the judgment of the district court.

All Citations

734 Fed.Appx. 787

Footnotes

- * Judge Lewis A. Kaplan, of the United States District Court for the Southern District of New York, sitting by designation.
- 1 Thompson raises no arguments in his brief separately challenging the district court’s dismissal of his state law claims. He has thus abandoned any such claims. See *LoSacco v. City of Middletown*, 71 F.3d 88, 92–93 (2d Cir. 1995).

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**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of July, two thousand eighteen.

Hubert Thompson,

Plaintiff - Appellant,

v.

James C. Rovella, Chief of Police, City of Hartford, In
His Official Capacity, Anthony Kozieradzki, Liam Pesce,
Sergeant, City of Hartford, In His Individual and Official
Capacities, Tuyen Bergenholtz, Officer, City of Hartford,
In Her Individual and Official Capacities, City of
Hartford,

Defendants - Appellees,

John Doe, Supervisor, Crimes Against Persons Unit, City
of Hartford, In Her/His Individual and Official Capacities,
Jane Doe, Supervisor, Crimes Against Persons Unit, City
of Hartford, In Her/His Individual and Official Capacities,
John Doe(s), Evidence Officer(s) (2003-2014), City of
Hartford, In Their Individual Capacities, Jane Doe(s),
Evidence Officer(s) (2003-2014), City of Hartford, In
Their Individual Capacities,

Defendants.

Appellant, Hubert Thompson, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk




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United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 81. Supreme Court (Refs & Annos)

28 U.S.C.A. § 1254

§ 1254. Courts of appeals; certiorari; certified questions

Currentness

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 928; [Pub.L. 100-352](#), § 2(a), (b), June 27, 1988, 102 Stat. 662.)

[Notes of Decisions \(518\)](#)

28 U.S.C.A. § 1254, 28 USCA § 1254

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-243. Title 26 current through P.L. 115-244.