APPENDIX "A"

(3 pages)

FOR THE ELEVENTH CIRCUIT

No. 18-14220-J

STEVEN GARY SANDERS,

Plaintiff-Appellant,

versus

WILLIAM BECK,
CLAIRE M. NOBLE,
LYNN E. SHIPMAN,
STANLEY A. PERRY,
ELLEN SHIPMAN, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida

Before: TJOFLAT, MARCUS and GRANT, Circuit Judges.

BY THE COURT:

Steven Gary Sanders, in the district court, filed a notice of appeal and a motion to proceed on appeal *in forma pauperis*. The district court denied *in forma pauperis* status, certifying that the appeal was frivolous and not taken in good faith. However, the district court did not assess the $505.00 appellate filing fee, as is required under the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915.

Sanders has consented to pay the $505.00 filing fee, using the partial payment plan described under § 1915(b). Thus, the only remaining issue is whether the appeal is frivolous. *See*

(App. "A")

28 U.S.C. § 1915(e)(2)(B)(i). This Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

(App. "A"

APPENDIX "B"

(2 pages)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA GAINESVILLE DIVISION

STEVEN GARY SANDERS,

Plaintiff,

v. **Case No. 1:17cv270-MW/GRJ**

WILLIAM BECK, et al.,

Defendants.
_____/

ORDER ACCEPTING REPORT AND RECOMMENDATION

This Court has considered, without hearing, the Magistrate Judge's Amended Report and Recommendation, ECF No. 30, and has also reviewed *de novo* Plaintiff's objections to the report and recommendation, ECF No. 32. Accordingly,

IT IS ORDERED:

The amended report and recommendation is **accepted and adopted**, over Plaintiff's objections, as this Court's opinion. The Clerk shall enter judgment stating, "Plaintiff's amended complaint, ECF No. 24, is **DISMISSED.**" The Clerk shall close the file.

SO ORDERED on September 10, 2018.

s/ MARK E. WALKER
Chief United States District Judge

(App. "B")

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

STEVEN GARY SANDERS,

Plaintiff,

VS

Case No. **1:17cv270-MW/GRJ**

WILLIAM BECK, et al.,

Defendant,

JUDGMENT

Ordered and Adjudged that Plaintiff's amended complaint, ECF No. 24, is **DISMISSED**."

JESSICA J. LYUBLANOVITS, CLERK

September 10, 2018

s/ Blair K. Patton

DATE

Deputy Clerk: Blair K. Patton

(App. "B")

APPENDIX "C"

(2 pages)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14220-J

STEVEN GARY SANDERS,

Plaintiff-Appellant,

versus

WILLIAM BECK,
CLAIRE M. NOBLE,
LYNN E. SHIPMAN,
STANLEY A. PERRY,
ELLEN SHIPMAN, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida

Before: TJOFLAT, MARCUS and GRANT, Circuit Judges.

BY THE COURT:

Steven Gary Sanders has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's April 19, 2019, order denying him leave to proceed and dismissing his appeal, to review the dismissal of his *pro se* civil rights complaint, 42 U.S.C. § 1983. Upon review, his motion for reconsideration is DENIED because he has offered no meritorious argument to warrant relief.

(App. "C")

APPENDIX "D"

(15 pages)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA GAINESVILLE DIVISION

STEVEN GARY SANDERS,

Plaintiff,

v. **Case No. 1:17cv270-MW/GRJ**

WILLIAM BECK, et al.,

Defendants.
_____/

ORDER ACCEPTING REPORT AND RECOMMENDATION

This Court has considered, without hearing, the Magistrate Judge's Amended Report and Recommendation, ECF No. 30, and has also reviewed *de novo* Plaintiff's objections to the report and recommendation, ECF No. 32. Accordingly,

IT IS ORDERED:

The amended report and recommendation is **accepted and adopted**, over Plaintiff's objections, as this Court's opinion. The Clerk shall enter judgment stating, "Plaintiff's amended complaint, ECF No. 24, is **DISMISSED**." The Clerk shall close the file.

SO ORDERED on September 10, 2018.

s/ MARK E. WALKER
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

STEVEN GARY SANDERS,

Plaintiff,

v. Case No. 1:17-cv-270-MW-GRJ

WILLIAM BECK, et al.,

Defendants.
_____/

AMENDED REPORT AND RECOMMENDATION

This matter is before the Court on ECF No. 24, Plaintiff's second amended complaint, and ECF No. 27, Plaintiff's "Motion in Support of Objections to Courts Report and Recommendation."[1]

Plaintiff, a *pro se* prisoner currently confined at Lawtey Correctional Institute, filed the pending civil rights complaint under 42 U.S.C. § 1983 against sixteen named sheriffs and investigators, who allegedly engaged in a multi-jurisdictional conspiracy throughout Florida and Georgia starting in

[1] On June 29, 2018, the undersigned recommended dismissing Plaintiff's second amended complaint as time-barred and because it was likely *Heck*-barred. ECF No. 26. Plaintiff then filed a lengthy set of objections. ECF No. 27. Following the filing of those objections, the district judge remanded the case back to the undersigned to consider Plaintiff's objections in the first instance. ECF No. 28.

(App "D")

2012, involving illegal searches and seizures, false arrests, fraud, falsifying evidence, and many other instances of police misconduct. *Id.*

According to Plaintiff, he was assaulted and illegally detained without probable cause on March 8, 2012, in Alachua County, Florida, even though, Plaintiff says, he was not committing a crime or acting suspicious at the time. The same day, officers and investigators began investigating an alleged theft. During this investigation, Plaintiff and his vehicle were illegally searched without reason, and his property (e.g., his money, passport, cellphone, vehicle keys, and truck) was illegally seized from his person and his vehicle. Plaintiff was then charged with armed burglary based upon tampered evidence (i.e., placement of a weapon in evidence that did not belong to Plaintiff) and false reports. He was booked into the Alachua County Jail. ECF No. 24 at 7–14.

Plaintiff says the next day and thereafter, the police misconduct continued. Plaintiff's vehicle was illegally seized and an improper forfeiture proceeding began, sworn reports and affidavits containing knowingly false and misleading information were filed, an investigation ensued regarding criminal activity in other jurisdictions such as Volusia County, Florida and

(App. "D")

Monroe County, Georgia, Plaintiff's residences were illegally searched, and Plaintiff was maliciously arrested on other charges. *Id.* at 14–23.

Plaintiff's allegations can be summarized as follows:

> Between the dates of 3/8/12 and 2/26/16, Defendants Noble, Beck, Frantz, and Fultz orchestrated a series of cumulative illegal actions that culminated in a conspiracy to falsely arrest the Plaintiff in multiple jurisdictions that include: Alachua County, FL, Highlands County, FL, Hall County, GA, Henry County, GA, Savannah, GA, and Concord, NC. All charges within these areas were either dismissed or never filed in favor of the Plaintiff. The cumulative unlawful actions, as documented throughout this complaint, will support the premise that the aforementioned Defendants intended to use their official positions not only to facilitate the false arrest of the Plaintiff in the named jurisdictions, but to deprive him of his liberty and property through deliberate decisions of the court. By actively encouraging and aiding law enforcement officials to become complicit in perpetuating a results-oriented investigation with the specific intent of depriving the Plaintiff of his liberty and property, Defendants Noble, Beck, Frantz, and Fultz willfully violated Plaintiff Sanders rights under the 4th, 5th, 8th, and 14th Amendments to the U.S. Constitution.

Id. at 22–23.

Throughout his complaint, Plaintiff alleges that Defendants violated his First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights due to this conspiracy to have Plaintiff falsely arrested and due to the multitude of instances of police misconduct. As relief, he requests a declaration that the conduct detailed in the complaint violated his constitutional rights,

(App. "D")

compensatory damages of $8,000,000 against each Defendant, and punitive damages of $100,000,000 against each Defendant. *Id.* at 4–24.

As the Court concluded in its original report and recommendation, the claims in Plaintiff's complaint are time-barred. Here's why. A federal § 1983 claim is governed by the forum state's statute of limitations. *Burton v. City of Belle Glade*, 178 F.3d 1175, 1188 (11th Cir. 1999) (citing *Owens v. Okure*, 488 U.S. 235, 249-50 (1989); *Wilson v. Garcia*, 471 U.S. 261, 276 (1985)). In Florida, "a plaintiff must commence a § 1983 claim . . . within four years of the allegedly unconstitutional or otherwise illegal act." *Burton*, 178 F.3d at 1188 (citing *Baker v. Gulf & Western Indus., Inc.*, 850 F.2d 1480, 1483 (11th Cir.1988)). Although the length of the limitations period is determined by state law, when a § 1983 action accrues is a question of federal law. *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987) (and cases cited therein). The statute of limitations begins to run when the facts supporting the cause of action are apparent or would be apparent to a reasonable person, and when the plaintiff knows or has reason to know of his injury. *Id.*

In this case, it is apparent from the face of the second amended complaint that Plaintiff's claims are time-barred because the alleged

(App. "D")

unconstitutional acts all occurred in 2012. Plaintiff was immediately aware of the existence of facts giving rise to claims of false arrest, false imprisonment, illegal searches of his person, and the wrongful seizure of his personal property—even if he did not know about the alleged tampering of evidence or falsification of reports—because Plaintiff alleges that he was arrested despite officers having no reason to suspect Plaintiff of any crime.[2] It is therefore abundantly evident based upon the allegation in the second amended complaint that Plaintiff knew of or had reason to know of his injury more than four years before Plaintiff filed his complaint in October 2017. Accordingly, Plaintiff's claims are time-barred.

Turning to Plaintiff's claims of false arrest and false imprisonment, Plaintiff knew of or had reason to know that he was unlawfully detained and falsely arrested at the time of the unlawful detention and at the time of his arraignment on the allegedly false charges in 2012. This is so because, according to Plaintiff, he did not commit any crimes, he was not

---

[2] While Plaintiff alleges that he did not learn about some unconstitutional acts until after the fact because he was not present when they occurred, that does not give Plaintiff liberty to delay in bringing the claims he was immediately aware of after the expiration of the statute of limitations period.

One such unconstitutional act that Plaintiff says he was not present was the alleged search and seizure of his vehicle. But Plaintiff does not identify the officer (or officers) responsible for this alleged search and seizure. Therefore, Plaintiff has failed to state a claim for the illegal search and seizure of his vehicle.

(App "D")

participating in any suspicious activity, and officers had no reason to believe he was involved in an armed burglary. Therefore, these claims accrued in 2012, more than four years before Plaintiff filed his complaint. *See Bloom v. Alvereze*, 498 F. App'x 867, 875–76 (11th Cir. 2012) (unlawful detention claim accrues at the time of arraignment); *see also Hayward v. Lee Cty. Sheriff's Office*, No. 2:14-cv-244-FtM-29MRM, 2017 WL 2834771, at *3–*4 (M.D. Fla. June 30, 2017) (false arrest claim accrues at time of arraignment).

Regarding Plaintiff's claims of illegal search and seizure, Plaintiff also knew of or had reason to know he was illegally searched and his property illegally seized from his person when those searches and seizures occurred in 2012. This is so because, according to Plaintiff, there was no probable cause or reason to search him or take his property. Therefore, these claims accrued in 2012, more than four years before Plaintiff filed his complaint. *See Hayward*, 2017 WL 2834771, at *3–*4 (illegal search and seizure claims accrue at time illegal search and seizure occur).

The same reasoning applies to Plaintiff's overarching conspiracy claim, which essentially amounts to the collection of alleged misconduct

(App. "D")

and its continued concealment.[3] Because Plaintiff says that the central purpose of the conspiracy was to falsely arrest Plaintiff in multiple jurisdictions (and that all of the other police misconduct and illegal acts were in furtherance of that purpose),[4] Plaintiff knew of or had reason to know of his injury from this conspiracy back in 2012 when Plaintiff was arrested and arraigned on the charges following these allegedly false arrests. Therefore, Plaintiff's conspiracy claim accrued at the time of his allegedly false arrest in 2012, more than four years before Plaintiff filed his complaint. *See Bloom*, 498 F. App'x at 875–76 (conspiracy claim accrues when the plaintiff suffers damages pursuant to conspiracy); *Hayward*, 2017

---

[3] It is questionable from the face of Plaintiff's complaint whether Plaintiff has even sufficiently stated a conspiracy claim. "To establish a prima facie case of conspiracy, [the plaintiff] must show, among other things, that Defendant Officers 'reached an understanding to violate [his] rights.'" *Rice v. Sixteen Unknown Fed. Agents*, 658 F. App'x 959, 961 (11th Cir. 2016) (quoting *Rowe v. City of Ft. Lauderdale*, 279 F.3d 1271, 1283 (11th Cir. 2002)). Although Plaintiff alleges that Defendants worked together to engage in the alleged misconduct and to cover it up, Plaintiff is lacking in facts sufficient to demonstrate the plausibility of the existence of any real agreement or understanding between the many named Defendants.

[4] Plaintiff reiterates this purpose in his objections. ECF No. 27 at 1–2 ("As it relates to this complaint, each of the sixteen named Defendants willingly participated in the overall conspiratorial objectives of: A) facilitating the false arrest of the Plaintiff in one or more of the following jurisdictions: Alachua County, FL, Highlands County, FL, Hall County, GA, Henry County, GA, Savannah, GA, and Concord, NC, and B) conspiring to deprive the Plaintiff of his liberty, property, and due process rights by acting both individually and as a group to fraudulently conceal the multiple illegal actions of law enforcement through a perversion of legal police procedures and deliberate deceptions of the court.")

(App. "D")

WL 2834771, at *3–*4 (civil conspiracy claim accrues at time of injury to plaintiff).

Plaintiff attempts to argue that although his claims ordinarily would be time-barred because the events occurred in 2012, the statute of limitations period should have been tolled in this case. More specifically, he says the following:

> [T]he statute of limitations, as it relates to the illegal actions taken by law enforcement as detailed in this complaint, should be tolled until 12/16/15 since he neither knew or had reason to know of possible constitutional violations until court testimony given by Defendant Frantz on said date. During this testimony, Defendant Frantz inadvertently gave testimony that, taken as true, implicated himself and other Defendants in a number of illegal acts that include tampering with evidence, perjury, filing false police reports, and other official misconduct. As such, the named Defendants, through multiple deceptions of the court, managed to fraudulently conceal their illegal actions with impunity until said testimony by Defendant Frantz. Further, since the Plaintiff has been incarcerated since 3/8/12, he was unable to investigate his suspicions and determine what constitutional injuries, if any, he had suffered until he was physically able to access a law library on 4/12/16, thereby extending the tolling period further.

ECF No. 24 at 23. For the following reasons these allegations do not constitute a sufficient reason to toll the statute of limitations in this case.

First, to the extent Plaintiff claims that the statute of limitations should be tolled because Defendants' concealed the full extent of their misconduct

(App. "D")

(through the falsification of reports and tampering with evidence) until 2015, the concealment of misconduct does not warrant a tolling of the statute of limitations in this case. Any falsification of reports, tampering with evidence, or other action to conceal misconduct does not change the fact that Plaintiff knew or should have known of his injuries in 2012, by virtue of the fact that Plaintiff admits when he was arrested he knew he had been falsely searched, arrested, and imprisoned without any basis for doing so. *Cf. Hayward*, 2017 WL 2834771, at *6 ("[R]egardless of any alleged falsified documents, plaintiff should have known that he had claims at the time the defendants searched and seized him and his vehicle. False document would not have concealed the facts as they existed at the time of his search and seizure . . . .").

Second, to the extent Plaintiff suggests the limitations period should be tolled because he could not investigate his suspicions until he was able to access a law library in 2016 due to his incarceration, his inability to investigate also does not warrant tolling the statute of limitations. That Plaintiff had "suspicions" that his constitutional rights were violated shows that Plaintiff had knowledge of his injuries prior to that time. Further, it makes no difference that without conducting legal research he did not know

(App. "D")

what specific constitutional violations occurred. This is so because a lack of legal knowledge does not warrant tolling the statute of limitations. *See Rice v. Sixteen Unknown Fed. Agents*, 658 F. App'x 959, 962 (11th Cir. 2016) ("Neither [Plaintiff's] ignorance of the law nor his *pro se* status constitute 'extraordinary circumstances' sufficient to toll the running of the statute of limitations.").

In Plaintiff's objections, Plaintiff says that his claims are not time-barred because "the unlawful actions of the Defendants, occurring over a four year period, constitute a 'continuing violation,' which courts have held can reach back to the case's beginning, even if that beginning lies outside the statutory limit period." Although Plaintiff concedes that the illegal actions in his complaint occurred in 2012 and would ordinarily be time-barred, he says that "the numerous unlawful acts, as documented in the Plaintiff's complaint continued to pyramid until they culminated in the last known injury which occurred on 2/26/16, during court testimony given by Defendant Frantz." Based upon this reasoning Plaintiff argues that the statute of limitations should be tolled until February 2016 when Defendants' wrongful conduct became apparent during that court testimony. ECF No. 27 at 2–3.

(App. "D")

Plaintiff's argument misconstrues the continuing violation doctrine. According to the Eleventh Circuit, "the continuing violation doctrine allows a plaintiff to bring an otherwise time-barred claim when additional violations of law occur within the statutory period." *Betts v. Hall*, 679 F. App'x 810, 812 (11th Cir. 2017) (citing *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1221 (11th Cir. 2001)). But "[t]he critical distinction in the continuing violation analysis is whether the plaintiff complains of the present consequence of a one time violation, which does not extend the limitations period, or the continuation of that violation into the present, which does." *Lovett v. Ray*, 327 F.3d 1181, 1183 (11th Cir. 2003). In other words, if the "claims stemmed from discrete, one-time violations, . . . the fact that [the plaintiff] may continue to feel their effects does not extend the statute of limitations." *Betts*, 679 F. App'x at 813.

Plaintiff's claims in his complaint consist of a string of one-time events and violations that occurred in 2012. The injury he allegedly suffered occurred then when he was arrested and his property was seized. Plaintiff's allegations liberally construed describe conduct in which Defendants engaged in a serious of illegal activities that resulted in his false arrest and imprisonment, which activities Defendants attempted to

(App. "D")

cover up through the falsification of reports. But notably the only "continued violation" that Plaintiff alleges is Defendants' failure to disclosure their allegedly unconstitutional and illegal conduct. The continued concealment or cover up of misconduct does not constitute a "continuing violation" that permits Plaintiff to bring an otherwise time-barred claim.

Plaintiff also argues that the doctrine of equitable estoppel should apply to his case to toll the statute of limitations because "Defendants engaged in misrepresentation, concealment, [and] other misconduct and the plaintiff delayed bringing suit in reliance on it." Plaintiff says that "the officers involved in the incidents at issue deliberately concealed and covered up their tortious conduct. This led to multiple false arrests in the aforementioned jurisdictions that injured the Plaintiff." ECF No. 27 at 8.

"The doctrine of equitable tolling also extends the statute of limitations if 'extraordinary circumstances' prevent the plaintiff from filing within the statutory window." *Betts*, 679 F. App'x at 812–13 (citing *Arce v. Garcia*, 434 F.3d 1254, 1261 (11th Cir. 2006)). But equitable tolling is "only appropriate if the 'extraordinary circumstances' are beyond the plaintiff's control and unavoidable even with diligence." *Id.* at 813. For equitable

(App "D")

tolling to apply "[t]he plaintiff bears the burden of showing that such circumstances exist." *Id.*

As discussed above, the fact that Defendants allegedly concealed their conduct--- whether through making misrepresentations to the courts or through the fabrication of reports---fails to constitute "extraordinary circumstances" that warrant tolling the statute of limitations. *See Hayward*, 2017 WL 2834771, at *6. Further, that Plaintiff delayed in bringing his claims in reliance on any such misrepresentations by Defendants also provides no basis to toll the statute of limitations.

Regardless of how Plaintiff spins the facts regarding what he knew and did not know about the myriad of allegedly unconstitutional and illegal conduct that occurred in 2012, the fact remains that Plaintiff's central claim is that Defendants engaged in misconduct that resulted in his allegedly false arrest and incarceration in 2012. *See* ECF No. 27 at 5 ("[T]he continued illegal actions of the Defendants resulted in the false arrest and incarceration of the Plaintiff"). Yet Plaintiff brought no claims alleging false arrest or false imprisonment (or any other constitutional violation) until five years after the fact despite his assertion that the officers and investigators had no reason to suspect him of any crime. An arrest or seizure that occurs

(App. "D")

without any probable cause (or basis as Plaintiff suggests) gives rise to a constitutional claim when the arrest occurs. The plaintiff suffers injury at that time thus triggering the statute of limitations. The injured party does not get more time to bring the claims because he has not conducted the necessary legal research or because the police officers who filed the false reports attempt to take action to avoid the consequences of their actions.

Plaintiff is not entitled to a life time free pass to drag his claims for conspiracy, false arrest, and other related claims past the statute of limitations simply because it was not until years after his false arrest that he learned of illegal behind-the-scenes conduct used to conceal Defendants' alleged constitutional violations. While the Court remains sympathetic to the difficulties of attempting to litigate such cases from prison, the time to act has elapsed. Therefore, Plaintiff's claims are due to be dismissed as time-barred.

Accordingly, it is respectfully **RECOMMENDED** that:

(App. "D")

Petitioner's amended complaint, ECF No. 24, should be **DISMISSED**, and the case should be **CLOSED.**

IN CHAMBERS this 23rd day of August 2018.

s/ Gary R. Jones
GARY R. JONES
United States Magistrate Judge

NOTICE TO THE PARTIES

Objections to these proposed findings and recommendations must be filed within fourteen (14) days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only, and does not control. A copy of objections shall be served upon all other parties. If a party fails to object to the magistrate judge's findings or recommendations as to any particular claim or issue contained in a report and recommendation, that party waives the right to challenge on appeal the district court's order based on the unobjected-to factual and legal conclusions. See 11th Cir. Rule 3-1; 28 U.S.C. § 636.

(App. "D")