UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2070

In re: MAECHEL SHAWN PATTERSON,

Petitioner.

On Petition for Writ of Mandamus. (5:13-ct-03132-D)

Submitted: November 19, 2019 Decided: November 21, 2019

Before WILKINSON and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Maechel Shawn Patterson, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Maechel Shawn Patterson petitions for a writ of mandamus seeking an order directing the district court to: (1) vacate its November 6, 2014, order denying reconsideration of the order dismissing his 42 U.S.C. § 1983 (2012) action; (2) liberally construe his § 1983 complaint as a motion for a sentence reduction; and (3) reduce his sentence to time served and order his immediate release. We conclude that Patterson is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976); *United States v. Moussaoui*, 333 F.3d 509, 516-17 (4th Cir. 2003). Mandamus relief is available only when the petitioner has a clear right to the relief sought and no other adequate means for obtaining that relief. *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018). Further, mandamus may not be used as a substitute for appeal. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007).

The relief sought by Patterson is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition for writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

1ST ORDER 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CT-3132-D

MAECHEL S. PATTERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
MITCHELL D. NORTON (D.A.), et al.,	)	
	)	
Defendants.	)	

On May 28, 2013, Maechel S. Patterson ("plaintiff" or "Patterson"), a state inmate proceeding pro se, filed a complaint under 42 U.S.C. § 1983 [D.E. 1]. Patterson seeks leave to proceed in forma pauperis [D.E. 2]. As explained below, the court dismisses the complaint as frivolous.

When a prisoner seeks relief in a civil action from a governmental entity or officer, a court must review and dismiss the complaint if it is "frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(a)–(b)(1). A case is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). Claims that are legally frivolous are "based on an indisputably meritless legal theory and include claims of infringement of a legal interest which clearly does not exist." Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994) (quotation omitted). Claims that are factually frivolous lack an "arguable basis" in fact. Neitzke, 490 U.S. at 325.

The standard used to evaluate the sufficiency of a pleading is flexible, and a pro se complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (quotation omitted). Erickson,

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however, does not undermine the "requirement that a pleading contain 'more than labels and conclusions.'" Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)); see Ashcroft v. Iqbal, 556 U.S. 662, 677–83 (2009); Coleman v. Md. Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff'd, 132 S. Ct. 1327 (2012); Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255–56 (4th Cir. 2009); Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009). Additionally, the court has "an independent obligation to determine whether subject-matter jurisdiction exists." Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006).

Patterson alleges that defendants—a county district attorney, a criminal defense attorney, investigators, a deputy sheriff, and the North Carolina Attorney General—were "all involved in a conspiracy to falsely present, execute, prosecute and uphold [his criminal] conviction based upon evidence obtained unconstitutionally." Compl. 2–3. Patterson seeks injunctive relief and "punitive damages in the amount of $250,000.00 from each defendant found liable and/or responsible by the court." Id. 4–5.

"To state a claim under [section] 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988); see also Philips v. Pitt Cnty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009). Additionally, a section 1983 plaintiff must plausibly allege the personal involvement of a defendant. See, e.g., Iqbal, 556 U.S. at 676; Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691–92 (1978); Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985). To state a Fourth Amendment malicious-prosecution claim under section 1983, a plaintiff must plausibly allege four elements: (1) that the defendant initiated or maintained a criminal proceeding against the plaintiff; (2) that the criminal proceeding terminated

in the plaintiff's favor; (3) that the proceeding was not supported by probable cause; and, (4) that, because of the criminal proceeding, the plaintiff suffered a deprivation of liberty akin to an unconstitutional seizure. See Brooks v. City of Winston-Salem, 85 F.3d 178, 183–84 (4th Cir. 1996); accord Lambert v. Williams, 223 F.3d 257, 262 (4th Cir. 2000).

A plaintiff cannot recover monetary damages for alleged constitutional violations when such recovery would imply the invalidity of an underlying conviction unless he can "prove that the conviction . . . has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Heck v. Humphrey, 512 U.S. 477, 486–87 (1994); see Omar v. Chasanow, 318 F. App'x 188, 189 & n.* (4th Cir. 2009) (per curiam) (unpublished) (collecting cases); Michau v. Charleston Cnty. S.C., 434 F.3d 725, 728 (4th Cir. 2006). "A district court must undertake a case specific analysis to determine whether success on the claims would necessarily imply the invalidity of a conviction or sentence." Thigpen v. McDonnell, 273 F. App'x 271, 272 (4th Cir. 2008) (per curiam) (unpublished). Patterson's claim for damages relies on the invalidity of his conviction. Because Patterson's conviction has not been overturned or otherwise invalidated, his efforts to recover damages fail.

Additionally, Patterson has named several defendants who are immune from or otherwise not amenable to suit. As for defendant Norton, prosecutors are absolutely immune when carrying out the judicial phase of prosecutorial functions, including initiating a judicial proceeding or appearing in court. See, e.g., Van de Kamp v. Goldstein, 555 U.S. 335, 342 (2009); Buckley v. Fitzsimmons, 509 U.S. 259, 269–70 (1993); Imbler v. Pachtman, 424 U.S. 409, 431 (1976). Patterson does not explain how the North Carolina Attorney General (Roy Cooper) was directly involved in his criminal prosecution, and thus his claim against Cooper fails. See, e.g., Iqbal, 556 U.S. at 676; Monell, 436

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U.S. at 691–92; Wright, 766 F.2d at 850; Sotelo v. Drew, 123 N.C. App. 464, 466–67, 473 S.E.2d 379, 380–81 (1996), aff'd, 345 N.C. 750, 483 S.E.2d 439 (1997); State v. Camacho, 329 N.C. 589, 594, 406 S.E.2d 868, 871 (1991). As for defendant Harrell, whom Patterson identifies as a "court appointed lawyer," Compl. 2, defense attorneys do not act under color of state law and, therefore, are not amenable to suit under section 1983, whether privately retained, appointed by the state, or employed as public defenders. See, e.g., Polk Cnty. v. Dodson, 454 U.S. 312, 325 (1981); Hall v. Quillen, 631 F.2d 1154, 1155–56 (4th Cir. 1980); Deas v. Potts, 547 F.2d 800, 800 (4th Cir. 1976) (per curiam). Thus, the court dismisses Patterson's claims against Cooper, Norton, and Harrell.

Alternatively, the court dismisses the action as untimely. Congress has not adopted a specific statute of limitations for actions brought under 42 U.S.C. § 1983. Instead, the analogous state statute of limitations applies. See, e.g., Burnett v. Grattan, 468 U.S. 42, 48–49 (1984); Nasim v. Warden, Md. House of Corr., 64 F.3d 951, 955 (4th Cir. 1995) (en banc). Specifically, the state statute of limitations for personal injury actions governs claims brought under 42 U.S.C. § 1983. Wallace v. Kato, 549 U.S. 384, 387 (2007). North Carolina has a three-year statute of limitations for personal injury actions. N.C. Gen. Stat. § 1-52(5). Thus, North Carolina's three-year statute of limitations governs Patterson's claims. See, e.g., Franks v. Ross, 313 F.3d 184, 194 (4th Cir. 2002); Brooks v. City of Winston-Salem, 85 F.3d 178, 181 (4th Cir. 1996); Nat'l Adver. Co. v. City of Raleigh, 947 F.2d 1158, 1161–62 & n.2 (4th Cir. 1991).

Although the limitations period for claims brought under section 1983 is borrowed from state law, the time for accrual of an action is a question of federal law. See, e.g., Wallace, 549 U.S. at 388; Brooks, 85 F.3d at 181. A claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action. See, e.g., Wallace, 549 U.S. at 391; Nasim, 64 F.3d at 955. Patterson was aware of any errors in his prosecution at the latest in 2001, when the North

Carolina Court of Appeals affirmed his conviction and the Supreme Court of North Carolina denied his petition for discretionary review. See State v. Patterson, 146 N.C. App. 113, 552 S.E.2d 246 (2001), disc. rev. denied, 354 N.C. 578, 559 S.E.2d 548 (2001). Therefore, Patterson's claims accrued in 2001 and expired in 2004. Patterson signed his complaint on May 21, 2013. Accordingly, the action is untimely.

Finally, the court cannot convert this action into a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 because such a petition would likewise be untimely. The court may sua sponte dismiss a section 2254 petition without notice if "it is indisputably clear from the materials presented to the district court that the petition is untimely and cannot be salvaged by equitable tolling principles or any of the circumstances enumerated in [section] 2244(d)(1)." Hill v. Braxton, 277 F.3d 701, 707 (4th Cir. 2002); see Eriline Co. S.A. v. Johnson, 440 F.3d 648, 656 (4th Cir. 2006). This court has already denied as untimely a section 2254 petition Patterson filed in 2012, see Patterson v. Oates, No. 5:12-HC-2063-D, [D.E. 5] (E.D.N.C. Oct. 3, 2012) (unpublished), and Patterson has not demonstrated circumstances warranting reconsideration of that decision.

In sum, the court DISMISSES plaintiff's complaint as frivolous. The clerk shall close the case.

SO ORDERED. This 4 day of March 2014.

JAMES C. DEVER III
Chief United States District Judge

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ORDER
MOTION
RECONSIDERATION

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CT-3132-D

MAECHEL S. PATTERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
MITCHELL D. NORTON (D.A.), et al.,	)	
	)	
Defendants.	)	

On May 28, 2013, Maechel S. Patterson ("plaintiff" or "Patterson"), a state inmate proceeding pro se, filed a complaint under 42 U.S.C. § 1983 against a county district attorney, his former criminal defense attorney, investigators, a deputy sheriff, and the North Carolina Attorney General [D.E. 1]. Patterson proceeds in forma pauperis [D.E. 4]. On March 4, 2014, the court reviewed the complaint pursuant to 28 U.S.C. § 1915A and dismissed it as frivolous [D.E. 5]. On March 21, 2014, Patterson filed a document which the court construed as a motion for reconsideration [D.E. 7]. On April 22, 2014, in response to the court's order, Patterson filed a supplement to his motion for reconsideration [D.E. 8, 9].

On October 28, 1999, in Beaufort County Superior Court, a jury convicted Patterson of first-degree murder and the trial court sentenced Patterson to life in prison. State v. Patterson, 146 N.C. App. 113, 115, 552 S.E.2d 246, 250 (2001). On May 28, 2013, Patterson filed this civil rights complaint alleging that defendants were "all involved in a conspiracy to falsely present, execute, prosecute and uphold [his criminal] conviction based upon evidence obtained unconstitutionally." Compl. [D.E. 1] 2–3; see [D.E. 5] 2; Mem. Supp. Mot. Reconsider [D.E. 9] 1. In dismissing

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Patterson's complaint, the court found that Heck v. Humphrey, 512 U.S. 477, 486–87 (1994), barred his request for monetary damages because his conviction had not been reversed or otherwise invalidated. [D.E. 5] 3. The court also found that Patterson had named defendants who are immune from or otherwise not amenable to suit, that Patterson's claims were time-barred, and that the court could not convert Patterson's complaint to a habeas petition. Id. 3–5.

Rule 59(e) of the Federal Rules of Civil Procedure permits a court to alter or amend a judgment. See Fed. R. Civ. P. 59(e). The decision to alter or amend a judgment pursuant to Rule 59(e) is within the sound discretion of the district court. See, e.g., Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 653 (4th Cir. 2002); Hughes v. Bedsole, 48 F.3d 1376, 1382 (4th Cir. 1995). The Fourth Circuit has recognized three reasons for granting a motion to alter or amend a judgment under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available [previously]; or (3) to correct a clear error of law or prevent manifest injustice." Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (quotations omitted); see Bogart v. Chapell, 396 F.3d 548, 555 (4th Cir. 2005); Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). None of these reasons is applicable here.

Patterson seeks to avoid dismissal by amending his complaint to dismiss any claim against the immune defendants while proceeding with a claim against Sheriff Jordan and several deputies concerning a warrantless search. Mem. Supp. Mot. Reconsider 1–2. Patterson specifically asserts that the "evidence seize[d] . . . help[ed] convict Patterson" at trial. Id. 3. Patterson's proposed amendment does not save his complaint from Heck's bar because Patterson alleges no injury other than his conviction. See Bishop v. Cnty. of Macon, 484 F. App'x 753, 756 (4th Cir. 2012) (per curiam) (unpublished); Hunt v. Michigan, 482 F. App'x 20, 21–22 (6th Cir. 2012) (per curiam) (unpublished), cert. denied, 133 S. Ct. 1999 (2013); Baldwin v. O'Connor, 466 F. App'x 717,

717–18 (10th Cir. 2012) (unpublished). Thus, the court denies the motion.

Alternatively, to the extent that plaintiff requests relief under Rule 60(b) of the Federal Rules of Civil Procedure, the motion also fails. Rule 60(b) authorizes the court to "relieve a party . . . from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect; . . . [or] fraud . . . , misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(1), (3). Under Rule 60(b), "a moving party must show that his motion is timely, that he has a meritorious [claim or defense] . . . , and that the opposing party will not be unfairly prejudiced by having the judgment set aside." Nat'l Credit Union Admin. Bd. v. Gray, 1 F.3d 262, 264 (4th Cir. 1993) (quotation omitted). If a party meets these threshold conditions, the party must then "satisfy one of the six enumerated grounds for relief under Rule 60(b)." Id. at 266. Patterson has not made the requisite threshold showings and therefore is not entitled to relief under Rule 60(b).

In sum, the court DENIES plaintiff's motion for reconsideration [D.E. 7].

SO ORDERED. This 6 day of November 2014.

JAMES C. DEVER III
Chief United States District Judge