

**In The  
Supreme Court of the United States**

**ALI MEHDIPOUR,**

**Petitioner,**

**vs.**

**KEITH SWEENEY, ET AL.,**

**Respondent.**

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**On Petition for Writ of Certiorari  
To The United States Court of Appeals  
For the Tenth Circuit  
19-6022**

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**RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT  
KEITH SWEENEY

April 8, 2020

## **QUESTION PRESENTED**

Does a court of appeals have jurisdiction under 28 U.S.C. §1291 to review and reverse, in an appeal from an order denying a Rule 60(b) motion, a prior order which dismissed a case on statute of limitations grounds and which was not timely appealed?

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## STATEMENT OF THE CASE

Petitioner Mehdipour's Appendix to his Petition for Writ of Certiorari includes two documents, the Order and Judgment from the Tenth Circuit Court of Appeals dated December 4, 2019,<sup>1</sup> and an order from the District Court for the Western District of Oklahoma dated January 19, 2017.<sup>2</sup> The assumption Mehdipour would like this Court to make, and the assumption it would be easy to make without a careful review of the history of the case, is that the 2017 district court order was the subject of the 2019 appellate decision. However, this is not correct. The district court order which was actually reviewed in the December 4, 2019 appellate decision, because it was the only order the appellate court had jurisdiction to review, was a January 18, 2019 order<sup>3</sup> denying Mehdipour's untimely motion to vacate the court's prior order of January 19, 2017. See, Appx. p. 3. An overview of the relevant timeline is set out below.

On March 21, 2013, Respondent Keith Sweeney arrested Petitioner Ali Mehdipour for possession of a controlled dangerous substance with intent to distribute following a traffic stop. Sweeney's probable cause affidavit was prepared the same day. On July 2, 2013, the Oklahoma County District Attorney's Office filed an information charging Mehdipour with possession of a controlled dangerous substance with intent to distribute, and with possession of proceeds derived from a violation of the Uniform Controlled Dangerous Substance, and on October 30, 2013, an Oklahoma County District Judge conducted a preliminary hearing and bound Mehdipour over for trial. On December 31, 2013, Mehdipour filed a Motion to Suppress, a Motion to Quash, and a Motion to Dismiss.

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<sup>1</sup> See, Petitioner's Appendix, pp. 1-4.

<sup>2</sup> See, Petitioner's Appendix "C". The January 19, 2017 order is labeled Appendix C, but there is no document labeled Appendix B.

<sup>3</sup> The January 18, 2019 order is included as Attachment D of Respondent's Supplemental Appendix, pp. 7-12.

The Oklahoma County District Court held a hearing on Mehdipour's combined motions on March 19, 2014, and granted all three motions in open court. Mehdipour was present at this hearing. On April 3, 2014, an order memorializing the March 19, 2014 ruling was filed.<sup>4</sup> The Oklahoma County District Attorney's Office subsequently filed a "Motion to Dismiss and to Recall Warrant," which was signed by the District Court judge on April 23, 2014 and filed on April 25, 2014.<sup>5</sup> On April 22, 2016, Mehdipour filed a §1983 lawsuit against Sweeney, which alleged:

The conduct of Defendant Officer Sweeney, Officer Lefebvre and Lt. Holt<sup>6</sup> resulted in Plaintiff being falsely, maliciously, and unlawfully arrested and detained, and his vehicle and person were illegally searched, and as such Plaintiff was deprived of his right to be free from unreasonable and unlawful search of his vehicle and person, seizure of his person, to the equal protection of the laws, and to due process of law, in violation of the Fourth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

Malicious prosecution was not mentioned in the complaint, and the complaint did not describe any specific actions taken by Sweeney after the March 21, 2013 arrest. Sweeney filed a motion to dismiss on the grounds the lawsuit was barred by the statute of limitations. In his response to the motion to dismiss, Mehdipour conceded that the statute of limitations had run on the false arrest claim. He further conceded the complaint did not "explicitly allege" a claim for malicious prosecution. Nonetheless, Mehdipour alleged that Officer Sweeney's role in making the

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<sup>4</sup> The April 3, 2014 Order is listed in Mehdipour's Petition for Certiorari as Appendix J, but does not appear to be included in the Appendix which was filed. Therefore, a copy of the Order is included as Attachment B of Respondent's Supplemental Appendix, pp. 2-3. Mehdipour conveniently omitted the April 3, 2014 Order from his time line in his brief filed in the the Tenth Circuit, presumably because that order contradicted the argument that his civil lawsuit was not barred by the two year statute of limitations.

<sup>5</sup> The April 25, 2014 Order is listed in Mehdipour's Petition for Certiorari as Appendix K, but also does not appear to be included in the filed Appendix. A copy of the order is included as Attachment A to Respondent's Supplemental Appendix, p. 1.

<sup>6</sup>Officer Lefebvre and Lt. Holt were never served. See, Supp. Appx, p. 7.

arrest and preparing the probable cause affidavit should implicitly be seen as participation in a malicious prosecution. The statute of limitations on this claim, according to Mehdipour, did not run until the (second) order dismissing the criminal case was filed on April 25, 2014.

On January 19, 2017, the District Court for the Western District of Oklahoma district court granted Officer Sweeney's Motion to Dismiss. The district court found both that Mehdipour's malicious prosecution claim was barred by the statute of limitations and that Mehdipour failed to allege sufficient facts to establish a claim for malicious prosecution. See, Appx. C, p. 5.<sup>7</sup> Although Mehdipour's Tenth Circuit briefs and his Petition for Certiorari choose to ignore subsequent district court proceedings, the January 19, 2017 order was not the order at issue in Mehdipour's appeal. Mehdipour filed a motion to alter or amend the judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, which was denied on July 18, 2017.<sup>8</sup> Sixteen months after that, on November 26, 2018, Mehdipour filed a motion to vacate the judgment. The motion to vacate was denied on January 18, 2019. See, Supp. Appx., pp. 7-12. The district court again rejected Mehdipour's novel interpretation of the statute of limitations, finding that any malicious prosecution claim would have to have been filed no later than April 3, 2016. See, Supp. Appx., p. 8. The district court also found Mehdipour's request for relief from the January 19, 2017 order was untimely, stating:

This case is over. Judge Miles-LaGrange's Order (Doc. 21) expressly and unambiguously dismissed the entire action, not merely Plaintiff's claims against Defendant Sweeney. In addition to the unambiguous language dismissing the action, the grounds for dismissal— specifically, expiration of the statute of limitations period—is not one that could be cured through amendment; thus, the

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<sup>7</sup> Because no separate judgment was entered pursuant to Rule 58(a) of the Federal Rules of Civil Procedure, pursuant to Rule 58(c)(2)(B), the judgment date is 150 days from the date of the order, which was June 19, 2017.

<sup>8</sup> This order is listed in Mehdipour's Petition for Certiorari as Appendix O, but it does not appear to part of the filed Appendix. Therefore, it is included as Attachment C of Respondent's Supplemental Appendix, pp. 4-6.

practical implication of the dismissal was that it was final. Because no separate judgment was entered pursuant to Fed. R. Civ. P. 58(a), the judgment date, pursuant to Fed. R. Civ. P. 58(c)(2)(B), is June 19, 2017, 150 days after the dispositive order. That date governs the time for seeking relief under Rule 60(c), which mandates that any motion under Rule 60(b)(1) must be within a year after the entry of the judgment or order. Accordingly, Plaintiff's request for relief is untimely. See, Supp. Appx. pp. 10-11.

On February 13, 2019, Mehdipour filed a notice of appeal, which stated he was appealing from "the Order of dismissal of this action entered on January 18, 2019."<sup>9</sup> Mehdipour's appellate brief was the first point in this litigation where he addressed the Oklahoma statutes upon which he now relies, 22 Okla. Stat. §1053 and §1054. On December 4, 2019, the Tenth Circuit affirmed the district court's denial of the motion to vacate, and dismissed the challenge to the 2017 judgment for lack of jurisdiction. See, Appx., pp. 1-2. As the Tenth Circuit recognized, it had no jurisdiction to hear an appeal from the 2017 order, because Mehdipour did not file a timely notice of appeal from that order. See, Appx., p. 3. After an untimely motion for rehearing was denied, Mehdipour filed this Petition for Writ of Certiorari, asking this Court to revisit a statute of limitations issue which was correctly decided, and more importantly was finally decided, in January of 2017.

## **REASONS FOR DENYING THE WRIT**

First and foremost, no writ of certiorari should be granted in this case because Mehdipour's petition offers no compelling argument or authority in support of the writ. Certiorari should only be granted to settle issues of importance to the public, rather than just the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuits. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 79, 75 S. Ct. 613, 99 L.Ed. 897 (1955). One

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<sup>9</sup> The notice of appeal is listed in Mehdipour's Petition for Certiorari as Appendix O, but it does not appear to part of the filed Appendix. Therefore, a copy of the notice is included as Attachment E of Respondent's Supplemental Appendix, p. 13.

of the principal purposes of certiorari jurisdiction is to resolve conflicts among the United States courts of appeals and state courts concerning questions of federal law. *Braxton v. United States*, 500 U.S. 344, 347, 111 S. Ct. 1854, 114 L. Ed. 2d 385 (1991), citing Supreme Court Rule 10. Another is to correct error where a court of appeals has decided an important federal question in a way that conflicts with relevant Supreme Court precedent. See, Rule 10(c).

Mehdipour cites no decisions evidencing a conflict between circuits, and no precedents of this Court with which he believes the Tenth Circuit’s decision is in conflict. In fact, Mehdipour cites no case law at all. The only reason Mehdipour offers for granting a writ of certiorari is that “to allow what Officer Sweeney did to Petitioner to stand will be a travesty of justice.” See, Petition, p. 5. This could arguably be construed as a request that the Court exercise its supervisory power under Rule 10(a) to correct a departure by a lower court “from the accepted course of judicial proceedings.” However, neither the Tenth Circuit’s December 4, 2019 decision, nor the January 18, 2019 district court order which was the subject of the appeal, departed from the accepted course of judicial proceedings.

A judgment is not void simply because it may have been erroneous, and a motion filed under Rule 60(b)(4) is not a substitute for a timely appeal. *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010). When a party appeals from the denial of a Rule 60(b) motion, the only issue presented for review is the district court order denying the motion, and not the underlying judgment itself. If Mehdipour believed the determination made by the district court, in 2017, that his complaint was barred by the statute of limitations was erroneous, he could and should have appealed that decision, in 2017. He could not do so in 2019 by filing a “motion to vacate” the earlier order under the guise of a Rule 60(b)(4) motion, filing an appeal from the denial of his Rule 60(b) motion, and then using the appeal to

attack the 2017 order. The Tenth Circuit correctly concluded that it lacked jurisdiction under 28 U.S.C. §1291 to review the 2017 order. See, Appx., p. 3. Mehdipour’s notice of appeal was filed in time to challenge the district court’s 2019 order, but he chose not to address the subject of the 2019 order, which was a determination that his motion to vacate was untimely. See, Appx., p. 3.

In fact, Mehdipour characterized any discussion of the 2019 order as “intentional muck meant to distract from” his argument that the district court’s 2017 statute of limitations ruling was in error. See, Appx., p. 4. As a result, as the Tenth Circuit recognized, Mehdipour forfeited appellate review of the 2019 order. See, Appx.. p. 4, citing *Bronson v. Swenson*, 500 F. 3d 1099, 1104 (10<sup>th</sup> Cir. 2007). This Court will not review an issue on certiorari that the appellate court deemed to have been waived. *California v. Taylor*, 353 U.S. 553, 556, n. 2, 77 S. Ct. 1037, 1 L. Ed. 2d 1034 (1957). See also, *City of Springfield v. Kibbe*, 480 U.S. 257, 259, 107 S. Ct. 1114, 94 L. Ed. 2d 293 (1987) (“We ordinarily will not decide questions not raised or litigated in the lower courts.”) Even fundamental rights may be waived. *Peretz v. United States*, 501 U.S. 923, 936-937, 111 S. Ct. 2661, 115 L. Ed. 2d 808 (1991).

Second, Mehdipour has presented no compelling reason for the Court to review the statute of limitations issue. It is interesting that Mehdipour asks the Court to review the original statute of limitations ruling under a “fruit of the poisonous tree” analogy. The fruit of the poisonous tree doctrine is an offshoot of the exclusionary rule. *Utah v. Strieff*, 136 S. Ct. 2056, 2061, 195 L. Ed. 2d. 400 (2016). Thus, when it is applied, the doctrine is subject to the limitations of the exclusionary rule. This Court has repeatedly declined to extend the exclusionary rule to civil proceedings, or any proceedings other than criminal trials. *Pennsylvania Board of Probation and Parole v. Scott*, 524 U.S. 357, 363, 118 S. Ct. 2014, 141 L. Ed. 2d 344 (1998), citing *United States v. Janis*, 428 U.S. 433, 454, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976). The Court has also

consistently recognized that the exclusionary rule is not a personal constitutional right, and is not designed to redress the injury caused by an unconstitutional search. *Davis v. United States*, 564 U.S. 229, 236, 131 S Ct. 2419, 180 L. Ed. 2d 285 (2011); *Herring v. United States*, 555 U.S. 135, 141, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009). In other words, while the fruit of the poisonous tree doctrine may have protected Mehdipour from criminal liability, it does not afford protection from alleged judicial errors in his civil case.

The statute of limitations on a malicious prosecution claim begins to run when the criminal proceeding is terminated in favor of the accused. *Manuel v. City of Joliet*, 137 S. Ct. 911, 921, 197 L. Ed. 2d 312 (2017); *McDonough v. Smith*, 139 S. Ct. 2149, 2156, 204 L. Ed. 2d (2019). To be considered a favorable termination, a termination must indicate the innocence of the accused; when a case is terminated because key evidence is suppressed or ruled inadmissible, the termination is not indicative of innocence. *Cordova v. City of Albuquerque*, 816 F. 3d 645, 652 (10<sup>th</sup> Cir. 2016). The criminal proceeding against Mehdipour was terminated, although not “favorably terminated” under the analysis of *Cordova*, on either March 19, 2014, when Mehdipour’s motion to dismiss the criminal action was granted or, at the latest, on April 3, 2014, when the dismissal was memorialized in writing. See, Supp. Appx., p. 8. Therefore, the two-year statute of limitations for §1983 claims had run before Mehdipour’s lawsuit was filed on April 22, 2016.

Mehdipour does not challenge the rule of law set forth in *Manuel*. He agrees that the statute of limitations on his malicious prosecution claim began to run when the criminal proceeding was terminated in his favor. Instead, Mehdipour simply asks the Court to apply a later date of termination based on 22 Okla. Stat. §1053, which allows the state to appeal from a pretrial order, decision, or judgment suppressing evidence. The accrual date of a §1983 cause of action is a question of federal law that is not resolved by reference to state law. *Wallace v. Kato*, 549 U.S.

384, 388, 127 S. Ct. 109, 166 L. Ed. 2d 973 (2007). However, to the extent 22 Okla. Stat. §1053 is relevant, the manner in which Mehdipour asks the Court to construe the statute is precluded by 22 Okla. Stat. §1056. The latter statute states “An appeal taken by the state in no case stays or affect the operation of the judgment in favor of the defendant, until the judgment is reversed.” The criminal case against Mehdipour was dismissed on April 3, 2014; the state’s right to appeal did not stay or affect that dismissal.

Finally, as Rule 10 makes clear, a petition for certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. Mehdipour’s petition for certiorari is based on the assertion that the district court misapplied the statute of limitations rule set forth in *Manuel*, by choosing the first rather than the second dismissal order entered in the criminal case as the date of termination. The statutes upon which Mehdipour bases this assertion were not presented to the district court, and the order containing the asserted error was not timely appealed. Declining to relieve Mehdipour of the consequences of his own lack of diligence in pursuing his malicious prosecution claim is not a travesty of justice.

## **CONCLUSION**

Petitioner Mehdipour presents no compelling reason this Court should revisit a 2017 district court decision, which was not timely appealed and which the Tenth Circuit determined it lacked jurisdiction to review under 28 U.S.C. §1291. Therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

Ambre C. Gooch

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ATTORNEYS FOR RESPONDENT  
KEITH SWEENEY

April 8, 2020



FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

APR 25 2014

THE STATE OF OKLAHOMA, Plaintiff,  
VS. ALI MEHDIPOUR, Defendant,

TIM RHODES  
COURT CLERK

CASE NO: CF-2013-3678

MOTION TO DISMISS AND TO RECALL WARRANT

FILED: 07/02/2013  
CRIME: COUNT 1: POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE  
WITH INTENT TO DISTRIBUTE  
COUNT 2: POSSESSION OF PROCEEDS DERIVED FROM A VIOLATION OF  
THE UNIFORM CONTROLLED DANGEROUS SUBSTANCE ACT  
DISMISSED: 03/19/2014

COMES NOW, DAVID W. PRATER, the duly appointed, qualified, and acting District Attorney, District No. 7, Oklahoma County, State of Oklahoma, and moves to Court to dismiss the above entitled cause and to recall the Arrest Warrant for the following reasons, to-wit:

DISMISSED: EVIDENCE SUPPRESSED



David W. Prater,  
District Attorney, District No. 7  
Oklahoma County, Oklahoma

CLAYTON NIEMEYER  
ASSISTANT DISTRICT ATTORNEY

ORDER DISMISSING CASE/CAUSE AND RECALLING WARRANT

NOW on this 23<sup>rd</sup> day of, April, 2014, the above entitled cause, coming on to be heard upon motion to dismiss said cause, and the Court being fully advised in the premises, finds that said motion should be sustained; and, it is therefore ORDERED, ADJUDGED, AND DECREED that said cause be, and same is hereby dismissed for the reason as set forth in said motion.

IT IS FURTHER ORDERED BY THIS COURT that the ARREST WARRANT issued in this case is hereby ordered canceled, withdrawn, and recalled, and the Clerk of this Court is ordered and directed to serve a copy of this order on the Sheriff of Oklahoma County.

GLENN M. JONES,  
JUDGE OF THE DISTRICT COURT

JH

pk 4/28/14



IN THE DISTRICT COURT OF OKLAHOMA COUNTY, *FILED IN DISTRICT COURT  
OKLAHOMA COUNTY*

STATE OF OKLAHOMA

APR 08 2014

State of Oklahoma, )  
Plaintiff, )  
vs. ) CF-2013-3877  
Ali Mehdipour, )  
Defendant. )

11 *TIM RHODES  
COURT CLERK*

**Order Sustaining Defendant's Motion to Suppress, Motion to Quash, and  
Motion to Dismiss**

Now on this 19<sup>th</sup> day of March, 2014, this matter comes before the Court on the  
Defendant's combined motions to suppress, quash and dismiss.

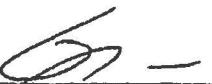
Having reviewed the files and pleadings herein, having heard arguments of counsel and  
otherwise being fully advised THE COURT FINDS:

1. The arresting officer stopped Defendant for failing to signal his intention to turn from a private parking lot onto a public street.
2. Neither the state statutes nor Oklahoma Municipal Code requires a driver to signal an intention to turn from a public parking lot onto a public street.
3. The "traffic stop" in the case at bar was unlawful as no traffic offense had been committed.
4. The arresting officer did have cause to stop Defendant's car due to the anonymous tip that criminal activity had occurred. However, when it was determined no offense had been committed, the right to detain Defendant ended.

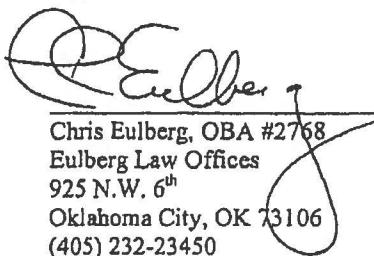


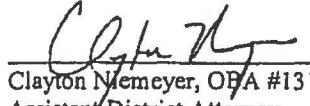
5. The search of Defendant's automobile was made after it was determined no crime had been committed and was made with neither a warrant nor consent.
6. The search of Defendant's automobile was made while Defendant was not present in the car but was handcuffed inside a nearby police car and not within reach of the automobile being searched.
7. The search of Defendant's automobile was illegal and the fruits of the search must be suppressed under the doctrine of *Arizona v. Gant*, 556 U.S. 332 (2009) and *Baxter v. State*, 2010 OK CR 20.
8. Absent the suppressed evidence, there was no evidence presented at the preliminary hearing to show that the crimes charged were committed and Defendant's Motions to Quash and Dismiss should be sustained.

IT IS THEREFORE ORDERED that each of Defendant's motions are hereby sustained and the case is ordered dismissed.

  
Glen M. Jones  
District Judge

Approved:

  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

ALI MEHDIPOUR, )  
Plaintiff, )  
v. ) Case No. CIV-16-411-M  
KEITH SWEENEY, Oklahoma City )  
Police Officer, in his individual capacity, )  
J. BEFEBVRE, Oklahoma City )  
Police Officer, in his individual capacity, )  
R. HOLT, Oklahoma City Police )  
Lieutenant, in his individual capacity, )  
Defendants. )

## **ORDER**

Before the Court is Plaintiff's Motion to Alter and/or Amend Judgment, filed February 8, 2017. On February 23, 2017, defendant Keith Sweeney ("Sweeney") responded. No reply was filed. Based on the parties' submissions, the Court makes its determination.

Plaintiff moves this Court, pursuant to Federal Rule of Civil Procedure 59(e)<sup>1</sup>, to alter or amend its January 19, 2017 Order granting Sweeney's motion to dismiss on the grounds that plaintiff's claim for malicious prosecution was barred by the statute of limitations. However, since the Court did not enter a final judgment in this matter, the Court finds that plaintiff's motion is actually seeking relief under Rule 60(b)<sup>2</sup> and should be analyzed as a motion to reconsider.

<sup>1</sup> Federal Rule of Civil Procedure 59 pertains to a New Trial; Altering or Amending Judgment. Rule 59(e) provides that "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." Fed. R. Civ. P. 59(e).

<sup>2</sup> Federal Rule of Civil Procedure 60(b)(6) provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . any other reason that justifies relief.

Fed R. Civ. P. 60(b)(6).

“Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct error or prevent manifest injustice.” *Servants of the Paraclete v. John Does I-XVI*, 204 F.3d 1005, 1012 (10th Cir. 2000). A motion to reconsider is appropriate “where the court has misapprehended the facts, a party’s position, or the controlling law” but is not appropriate “to revisit issues already addressed or advance arguments that could have been raised in prior briefing.” *Id.*

Plaintiff specifically asserts that the Court’s ruling was a manifest error, as the statute of limitations for his malicious prosecution claim did not begin to run until April 25, 2014, when the state court judge memorialized in writing his dismissal of the state charges and recalled the warrant against plaintiff.<sup>3</sup> Sweeney contends that even if plaintiff was not put on notice that the time for his malicious prosecution claim had begun to run on March 19, 2014, when the state court judge orally dismissed the counts against plaintiff and the case was closed, he was certainly put on notice on April 3, 2014, when the state court judge issued an order memorializing his ruling in writing sustaining plaintiff’s motions to suppress, quash, and dismiss the state court action.

Having carefully reviewed the parties’ submissions, the Court finds that plaintiff has not presented any new grounds warranting reconsideration of the Court’s January 19, 2017 Order. Specifically, in its Order, the Court found that the time for plaintiff’s malicious prosecution claim began to run on March 19, 2014, when the state court judge sustained plaintiff’s motions to suppress, quash, and dismiss, as at that point the state court had dismissed the state court action

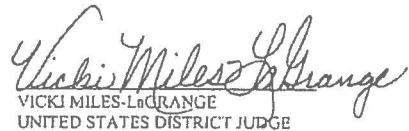
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<sup>3</sup> Plaintiff also asserts that instead of dismissal, this Court should have either granted plaintiff leave to amend his complaint or dismissed this action without prejudice. The Court acknowledges plaintiff’s assertions and advises plaintiff that in his response brief to Sweeney’s motion to dismiss, plaintiff did not seek leave to amend his complaint, and further, the Court’s Order did not specifically dismiss this action with prejudice, and if plaintiff’s counsel was unsure about the disposition of this matter, an inquiry to the Court would have informed plaintiff’s counsel of the correct disposition.

against plaintiff and closed the case. The Court finds that the state court's action on March 19, 2014, unambiguously put plaintiff on notice that the time for his malicious prosecution claim had started running. Therefore, the Court finds that plaintiff's motion to reconsider should be denied.

Accordingly, for the reasons set forth above, the Court DENIES Plaintiff's Motion to Alter and/or Amend Judgment [docket no. 24].

**IT IS SO ORDERED this 18th day of July, 2017.**

  
VICKI MILES-LAGRANGE  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

ALI MEHDIPOUR, )  
v. Plaintiff, )  
KEITH SWEENEY, an Oklahoma City )  
Police Officer, individually; )  
J. LEFEBVRE, an Oklahoma City )  
Police Officer, individually; and )  
R. HOLT, an Oklahoma City )  
Police Officer, individually, )  
Defendants. )  
Case No. CIV-16-411-R

## **ORDER**

Before the Court is Plaintiff's Motion to Vacate (Doc. 29) and Motion to Terminate Counsel (Doc. 30). A history of the case is in order.

## I. Background

On April 22, 2016, Plaintiff, appearing through counsel, filed this action alleging that his arrest and the attendant search of his vehicle on March 21, 2013, violated his right to be free from unreasonable search and seizure.<sup>1</sup> The Court issued summons that same day, although Plaintiff never filed a return of service for any Defendant. The sole indication that any Defendant was served was the entry of appearance by attorneys for Keith Sweeney and Defendant Sweeney's June 30, 2016, Motion to Dismiss. See Docs. 3–5.

<sup>1</sup> This case was originally assigned to the Honorable Judge Vicki Miles-LaGrange, who assumed senior status on November 2, 2018. Having been closed in 2017, the case was not immediately reassigned. Plaintiff filed the instant motions on November 26, 2018, and on January 7, 2019, the case was reassigned to the undersigned.

Thereafter Plaintiff's counsel moved to withdraw, which the Court granted on July 26, 2016. New counsel—the subject of Plaintiff's current Motion to Terminate Counsel—entered his appearance on October 12, 2016, *see* Doc. 16, and responded to Defendant Sweeney's motion on October 13, 2016. *See* Doc. 17. While conceding in the response that any claim premised on an allegedly unconstitutional arrest and seizure was untimely, defense counsel nevertheless argued that the case actually involved a *timely* malicious prosecution claim because the criminal charges against Mr. Mehdipour were not dismissed until April 25, 2014, and his civil action had been filed on April 22, 2016—that is, within two years of the malicious prosecution claim's accrual. *Id.* Defendant Sweeney filed a reply asserting that, even if the Complaint could be construed as alleging malicious prosecution claims, the Complaint could not avoid dismissal under Rule 12(b)(6), and further that any malicious prosecution claim was untimely because the underlying criminal action against Mr. Mehdipour was dismissed in open court in Mr. Mehdipour's presence on March 19, 2014. *See* Doc. 18. Further, the state court dismissal was commemorated in an April 3, 2014, Order. Therefore, any malicious prosecution claim had to be filed no later than April 3, 2016. *Id.* at 4.<sup>2</sup>

On January 19, 2017, the Court granted Defendant Sweeney's Motion to Dismiss, finding that Plaintiff's claims were barred by the applicable statute of limitations.<sup>3</sup> *See*

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<sup>2</sup> The docket sheet from the District Court of Oklahoma County reflects that Defendant appeared in person with counsel on March 19, 2014, and that his motion to dismiss was sustained. It further reflects a written order on April 3, 2014, sustaining his motion and dismissing the case. For reasons not apparent from the docket sheet, another entry marked "MOC&O" and reading "Motion to Dismiss and Order of Dismissal Counts 1 & 2/Order Dismissing Case/Cause and Recalling Warrant/Judge G. Jones" was entered on April 25, 2014. The parties provided copies of the April orders in conjunction with a later-filed motion.

<sup>3</sup> The Court relied on the March 19, 2014, ruling in open court in the District Court of Oklahoma County

Order, Doc. 21, at 5. The Order—which addressed only Defendant Sweeney—concluded as follows: “Accordingly, for the reasons set forth above, the Court GRANTS the Motion to Dismiss of Defendant Keith Sweeney . . . and DISMISSES this *action*” *Id.* (emphasis added). Though the Order did not address Plaintiff’s claims against Defendants Lefebvre and Holt, the case was closed in the Court’s electronic docketing system, consistent with the Order’s dismissal of the action. No separate judgment was entered.

On February 8, 2017, Plaintiff, through counsel, filed a motion to alter judgment. *See* Doc. 24. Plaintiff argued that the dismissal of his criminal case was not effective until April 25, 2014, and attached a copy of the order entered by the District Court of Oklahoma County on that date. *See* Doc. 24-2. In response, Defendant Sweeney provided the Court with a copy of the April 3, 2014, order from the District Court of Oklahoma County dismissing the criminal case against Mr. MehdiPour. *See* Doc. 25-1. The Motion to Alter or Amend was denied on July 18, 2017; Judge Miles-LaGrange affirmed her prior determination that Plaintiff’s cause of action for malicious prosecution accrued on March 19, 2014, and, therefore, any malicious prosecution claim was untimely. *See* Order, Doc. 27.

On April 26, 2018, Mr. MehdiPour, appearing *pro se*, filed a Notice of Abandonment of Counsel. *See* Doc. 28. The Court took no action on the notice, presumably because the case was closed.<sup>4</sup> Nothing more was filed in the case until Plaintiff’s current

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as the date for the accrual of any malicious prosecution claim.

<sup>4</sup> Although denominated as a Notice, the filing actually included a request that the Court “extend thirty-days for Plaintiff to determine how to proceed and to file a Motion including further details and intentions on how Plaintiff will proceed.” Doc. 28, at 2. As Plaintiff is likely aware from the April 30, 2018, Order

motions, wherein Plaintiff requests that he be permitted to terminate his counsel and that the Court vacate its order granting Defendant Sweeney's Motion to Dismiss. *See* Docs. 29–30. In both motions Plaintiff makes similar representations. The Court finds that the Motion to Vacate is untimely and without merit, and that the Motion to Terminate is moot as a result. Accordingly, it denies both motions.

## **II. Analysis**

This case is over. Judge Miles-LaGrange's Order (Doc. 21) expressly and unambiguously dismissed the entire action, not merely Plaintiff's claims against Defendant Sweeney.<sup>5</sup> *See Lewis v. Clark*, 577 F. App'x 786, 791–92 (10th Cir. 2014) (citing *Moya v. Schollenbarger*, 465 F.3d 444 (10th Cir. 2006)) (discussing when a dismissal order is final). In addition to the unambiguous language dismissing the action, the grounds for dismissal—specifically, expiration of the statute of limitations period—is not one that could be cured through amendment; thus, the practical implication of the dismissal was that it was final. *Id.* Because no separate judgment was entered pursuant to Fed. R. Civ. P. 58(a), the

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issued by Judge West in *Mehdipour v. City of Midwest City*, Case No. CIV-17-298-G, the Court cannot extend the time to act under Rules 59(b), (d), (e) or 60(b). See Docket No. 48, *Mehdipour v. City of Midwest City*, Case No. CIV-17-298-W (April 30, 2018).

<sup>5</sup> Despite the absence of any specific reference to Defendants Lefebvre and Holt, dismissal was appropriate against those Defendants because Plaintiff's claims are nearly identical to the time-barred malicious prosecution claim he attempted to pursue against Defendant Sweeney. *See McKinney v. Oklahoma*, 925 F.2d 363, 365 (10th Cir. 1991) (holding that "a *sua sponte* dismissal under Rule 12(b)(6) is not reversible error when it is 'patently obvious' that the plaintiff could not prevail on the facts alleged and allowing him an opportunity to amend his complaint would be futile" (citations omitted)); *Campos v. Las Cruces Nursing Ctr.*, 828 F. Supp. 2d 1256, 1266 (D.N.M. 2011) ("The court may dismiss a complaint *sua sponte* with prejudice under rule 12(b)(6) . . . for failure to state a claim if 'it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile.' (citations omitted)); *Yoakum v. W. Siloam Springs, Okla.*, No. 06-CV-0266-CVE-PJC, 2007 WL 1302570 (N.D. Okla. May 2, 2007) ("The Tenth Circuit has held that a district court may dismiss *sua sponte* a complaint for failure to state a claim." (citations omitted)).

judgment date, pursuant to Fed. R. Civ. P. 58(c)(2)(B), is June 19, 2017, 150 days after the dispositive order.<sup>6</sup> That date governs the time for seeking relief under Rule 60(c), which mandates that any motion under Rule 60(b)(1) must be within a year after the entry of the judgment or order.<sup>7</sup> Accordingly, Plaintiff's request for relief is untimely.

In addition, Plaintiff's motions address alleged shortcomings by his counsel. His allegations, however, are not supported by the record. Plaintiff incorrectly contends that his attorney "refused to file amended information specifying that this case is not a False Arrest matter, but instead a Malicious Prosecution matter." Doc. 30, at 1; *see also* Doc. 29, at 2. Plaintiff's response to the Motion to Dismiss specifically identified Plaintiff's claim as a claim for malicious prosecution, disavowing the clearly untimely false arrest claim. Mr. Mehdipour also indicates a belief that the Court applied a one-year statute of limitations period to his claim and that re-characterizing his claims would have resulted in application of a two-year period. Judge Miles-LaGrange, however, correctly applied the two-year limitations period for which Plaintiff advocates in the instant motions. Plaintiff claims the case was dismissed because counsel permitted it to languish on the Court's docket. Contrary to his belief, the Court dismissed the action because too much time passed between the dismissal of the criminal charges against Mr. Mehdipour and the filing of the Complaint. To the extent Plaintiff contends that counsel should have alleged discrimination as the basis for his illegal arrest and search, those claims would have been subject to dismissal because the two-year limitations period would have expired before this action

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<sup>6</sup> The 150th day was a Sunday and, thus, the next business day provides the applicable deadline.

<sup>7</sup> Rule 59(e) has a twenty-eight-day limit for seeking to alter or amend a judgment.

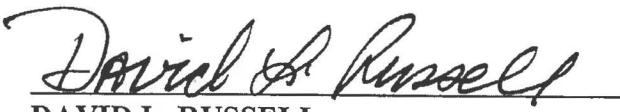
was filed. If Plaintiff takes issue with counsel's performance, he must address the issue with counsel or with the Oklahoma Bar Association. He is not, however, entitled to rewind this case to 2017.<sup>8</sup>

In the Motion to Vacate Judgment (Doc. 29), Plaintiff asserts that counsel was not authorized to stipulate to closing this action. Nothing in the record indicates any such stipulation by counsel. His argument that counsel did not inform him that the Court was scheduled to address Defendant Sweeney's Motion to Dismiss is without merit. The Court did not conduct a hearing. Rather, consistent with its practice, the Court issued a written order addressing the motion. None of the representations in Plaintiff's Motion to Vacate is supported by the record in this action. The motion is therefore **DENIED** because it is untimely and lacks merit. Because this action is over, Plaintiff's request to terminate counsel is **DENIED AS MOOT**.

The Clerk is directed to send a copy of this Order to Plaintiff:

Ali Mehdipour  
P.O. Box 2962  
Oklahoma City, OK 73101

IT IS SO ORDERED this 18<sup>th</sup> day of January, 2019.

  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE

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<sup>8</sup> The Court notes that Plaintiff was represented by counsel throughout these proceedings and, therefore, not entitled to liberal construction of the filings on his behalf.

**FILED**

FEB 13 2019

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

CARMELITA REEDER SHINN, CLERK  
U.S. DIST. COURT, WESTERN DIST. OKLA.  
BY KMT, DEPUTY

ALI MEHDIPOUR, )  
Plaintiff, )  
 )  
v. )  
 )  
KEITH SWEENEY, an Oklahoma City )  
Police Officer, individually; )  
J. LEFEBVRE, an Oklahoma City )  
Police Officer, individually; and )  
R. HOLT, an Oklahoma City )  
Police officer, individually, )  
Defendants. )  
 )  
CASE NO. CIV-16-411-R

**NOTICE OF APPEAL**

NOTICE is hereby given that I, Ali Mehdipour, plaintiff, in the above case number, Appeal to the United States Court of Appeals for Tenth Circuit, the Order of dismissal of this action entered on January 18<sup>th</sup>, 2019.

*Ali Mehdipour*  
Ali Mehdipour, Prose  
P.O. Box 2962  
Oklahoma City, OK, 73101

**CERTIFICATE OF MAILING**

On this 13 day of February 2019 a true and correct copy of foregoing was mailed to:

Susan A. Knight  
211 N. Robinson Ave  
Ste 800 N.  
OKC, OK 73102

*Ali Mehdipour*  
Ali Mehdipour