Supreme Court, U.S.
FILED
DEC 03 2019
OFFICE OF THE CLERK

19-8258

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DENVER MAXWELL GOREE, JR. – PETITIONER

VS.

SHANE JACKSON, WARDEN – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Denver Maxwell Goree, Jr., in Pro Se
LRF 111992
E.C. Brooks Correctional Facility
2500 South Sheridan Drive
Muskegon Heights, MI 49444

ORIGINAL

QUESTIONS PRESENTED

Whether Petitioner's parole process was unconstitutional where (1) the Michigan Parole Board failed to proceed with a recommendation for commutation in violation of Due Process of Law, and Equal protection under the law, and (2) Whether the Parole Board violated clearly established law set forth in the ex post facto clause by implementing new rules and regulations after Petitioner's prior considerations that caused a significant risk of increase in punishment?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Michigan Attorney General

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES CITED

CITATION **PAGE(S)**

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was November 15, 2019. The jurisdiction of this Court is invoked under ***28 USC § 1254(1).***

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Const, Am V – No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

US Const, Am VI – In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

US Const, Am XIV, Section 1 – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Ex Post Facto Sec. 9, Cl. 13 – Every law, which makes criminal an act that was innocent when done, or which inflicts a greater punishment than the law annexed to the crime when committed, is an ex post facto law within the prohibition of the Const.

Supreme Court Rule 10 – Considerations Governing Review on Certiorari – Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers: (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

STATEMENT OF THE CASE

The Petitioner asserts that he was deprived of a commutation process during a transitional period when the Michigan Parole Board was replaced by new members in 1992.

Prior to the change, on or about January of 1983, when the Petitioner had served approximately fourteen (14) years, the Michigan Parole Board held an executive session and decided by a majority vote, under attest to release the Petitioner after the service of twenty-two (22) years. See (**EXHIBIT B**).

When the Petitioner was granted a confirmed commutation score of twenty-two (22) years – see (**EXHIBIT C**)- the Parole Board had the authority and jurisdiction under Public Act of 1953, and amended in 1966, and the effective date took place on July 11, 1966, which is the statute that governs ***MCL 791.204***, and which states in part, to wit:

> "Sec.(4) Subject to Constitutional powers vested in the executive and judicial department of the State ***the department shall have exclusive jurisdiction of the following (B) Pardons, Reprieves, Commutations and Paroles.*** [Emphasis added].

The Policy Directive PD-DWA-4512, see (**EXHIBIT D**) was implemented by the Michigan Parole Board and authorized by the statute because the Parole Board had exclusive jurisdiction to do so, which states in part, to wit:

> "The guidelines ***shall*** be the basis for the Board's decision to refer most cases to the Governor with a recommendation for commutation.
>
> The parole board may at any future time revise the guidelines or grid as it deems appropriate, ***but any prisoner who has already entered the system and***

> ***received a recommendation date under one form of the guideline may not have that date delayed by any later revision of this kind.***" [Emphasis added].

It is clear, that both Statute and Policy are written under mandatory language, and where such language exists, a prisoner has a legitimate expectation of parole or "liberty interest" that cannot be denied without due process. ***Greenholtz v. Nebraska Penal Inmates,*** 442 U.S. 1, 11-12, 99 S.Ct. 2100, 60 L.Ed2d 668 (1979).

The Petitioner contends that once he received a receipt from the Chairman of the Parole Board, that his commutation score was confirmed. See **(EXHIBIT C)**. That confirmation gave the Petitioner a "protected liberty interest" in attaining release on parole. ***Greenholtz, supra.***

In ***Wilkinson v. Austin***, 545 U.S. 209, 125 S.Ct. 2384, 162 L.Ed2d 174 (2005), the United States Supreme Court held:

> "A liberty interest protected by Fourteenth Amendment Due Process Clause may arise from the constitution itself, by reason of guarantees implicit in the word 'liberty' or it may arise from an expectation or interest created by State laws or Policies." ***Id.***, 545 U.S. at 221.

The Petitioner would like to also emphasize that constitutional law 254.1 clearly states:

> "Once the state imposes limitations on its own discretion and requires that a specific standard prevail for decision making it creates a liberty interest."

Moreover, the decision by the Parole Board to proceed with a recommendation for commutation was an entitlement because the statue was

created by the legislature of the state, and implemented by state actors under mandatory language.

The Petitioner would like to stress to this Honorable Court that if the promulgated rules and procedures were violated in the statute that governs commutations, then clearly, the Petitioner's procedural due process was also violated by the Parole Board who failed to uphold the statute.

The Petitioner is fully aware that he does not have a constitutional right to a parole. But it is clear, that under the statue which as legal at the time it was committed, and written under mandatory language, and the decision to proceed with a recommendation for commutation as made by the Michigan Parole Board who created the expectation of parole or "liberty interest" in the first place. Then clearly, the Petitioner had a right to that process, but that process was abridged by the Parole Board.

It is well settled law that a prisoner is bound to the law in effect when the crime was committed. See, ***Wilkinson v. Dotson***, 544 U.S 74, 125 S.Ct. 1242, 161 L.Ed2d 253 (2005).

When the second Parole Board took office in 1992, they implemented a new policy that "Life Means Life" after the Petitioner had completed the twenty-two (22) years that was requested by the previous Parole Board at their executive session.

The new rules and amendments by the second Parole Board violate the ex post facto clause where such change has caused the Petitioner a significant risk of increased punishment.

The Petitioner has now served a total of fifty (50) years after receiving multiple five (5) year flops starting from 1992 through 2017 with no explanation other than "no interest."

The Petitioner firmly states that he has suffered a great deal of hardship after expecting a different outcome from his keepers. To be told that you're going home after a service of twenty-two (22) years, and now you're still incarcerated after fifty years have elapsed, goes beyond cruel and unusual punishment.

Now, it appears that the Petitioner is the subject of a "Double Standard" whereas, he is expected to honor "Life Means Life," when in fact the policy Petitioner was previously under was disregarded, and in violation of the ex post facto clause, the equal protection under the law.

REASONS FOR GRANTING THE PETITION

The decision by the Sixth Circuit Court of Appeals is in direct conflict with the United States Supreme Court's decision and goes contrary to the 5th and 14th Amendments to the United States Constitution, and Equal Protection under the law.

The Petitioner filed a law suit against the Michigan Parole Board in their individual and official capacities in the amount of $1,300,000 for violating the Petitioner's parole process under the Due Process Clause.

The Sixth Circuit Court of Appeals held that the Parole Board was immune from the suit under § 1983, and the 11th Amendment. That claim is

in direct conflict with the United States Supreme Court's decision in ***Wilkinson v. Dotson, supra***.

Moreover, if the Michigan Parole Board or any agency are immune from a lawsuit, then in essence, they are above the law and can never be held accountable for their actions.

The Court also claimed that the Petitioner did not have a liberty interest. And that decision is in conflict with Constitutional Law 254.1, which clearly states:

> "Once the State imposes limitations on its own discretion and requires that a specific standard prevail for decision making it creates a liberty interest."

In the instant case, the Petitioner was under a statute and policy that are written under mandatory language, and where such language exists, a prisoner has a legitimate expectation of parole or "liberty interest" that cannot be denied without due process. ***Greenholtz, supra***.

In ***Wilkinson v. Austin, supra***, the United States Supreme Court held:

> "A liberty interest protected by Fourteenth Amendment Due Process Clause may arise from the constitution itself, by reason of guarantees implicit in the work 'liberty' or it may arise from an expectation or interest created by State laws or Policies." ***Id.***, 545 U.S. at 221.

The Michigan Parole Board had the obligation to put the Petitioner's paperwork on the Governor's desk with a recommendation for commutation because that decision was previously made cast in stone. That failure denied the Petitioner of a contractual agreement that should be binding in a Court of law.

Moreover, that failure denied the Petitioner of procedural due process under the Due Process Clause.

Furthermore, Petitioner respectfully reminds this Honorable Court of the mandate set forth by this very Court in ***Marbury v. Madison,*** 5 U.S. 137, 163 (1 Cranch), 2 L.Ed 60, 69 (1803), where that Court held: "***[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded.'*** [Emphasis added].

The Petitioner's 14th Amendment rights were violated when the Michigan Parole Board failed to proceed with a commutation process. That failure denied the Petitioner of Equal Protection under the law in regards to those who were similarly situated when they were Granted a Recommendation for Commutation under the commutation process.

In conclusion, it should be clear to this Honorable Court that the Petitioner did have a "liberty interest" that came from the Michigan Parole Board in writing under attest. As such, Petitioner believes that he has established that he was denied his constitutional right to due process of law under this Honorable Court's mandates argued herein.

Based upon the foregoing points and authorities, the Petitioner respectfully requests this Honorable Court to grant the within writ and reverse the judgment of the court below. The petition for a writ of certiorari should be granted as Petitioner was denied his fundamental constitutional due process rights and protections.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

Denver M. Goree, Jr.

Dated: January 27, 2020

Denver Maxwell Goree, Jr.
LRF 111992
E.C. Brooks Corr Facility
2500 South Sheridan Drive
Muskegon Heights, MI 49444

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENVER GOREE,

Plaintiff,

v.

MICHIGAN PAROLE BOARD,

Defendant.
_____/

Case No. 1:19-cv-395

Honorable Robert J. Jonker

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915A(b) and 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim.

Discussion

I. Factual allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Earnest C. Brooks Correctional Facility, (LRF) in Muskegon Heights, Muskegon County, Michigan. Plaintiff sues the Michigan Parole Board.

Plaintiff alleges that on or about January of 1983, the Michigan Parole Board held an executive session and gave Plaintiff a commutation score of 22 years. At this time, Plaintiff had served 14 years of his life sentence. Plaintiff claims that he received a receipt from the chairman of the parole board, confirming that his score was 22 years. Plaintiff states that this confirmation gives him a liberty interest in being released on parole.

Plaintiff alleges that in 1992, new members came onto the Parole Board and that they implemented a new policy that "life means life." Plaintiff has now served 50 years on his sentence after receiving multiple 5 year flops with no other explanation than "no interest." Plaintiff contends that his continued incarceration violates his constitutional rights.

Plaintiff seeks a recommendation for commutation or immediate discharge from prison. Plaintiff also seeks damages.

II. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails "'to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). The court must determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a "'probability requirement,' . . . it

asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

Plaintiff states that he is currently serving a nonparolable life sentence in a Michigan prison. Plaintiff appears to be claiming that following his conviction and sentence, the Michigan Parole Board changed its policies in regard to its commutation procedures in a manner that violates the Ex Post Facto Clause of the United States Constitution. Plaintiff also asserts that the Parole Board's action created a liberty interest to recommend commutation to the governor after Plaintiff served 22 years of his life sentence.

Initially, the Court notes that Plaintiff has named the Michigan Parole Board as the sole defendant, not any one or more of the individual members of the board. The Michigan Parole Board is part of the Michigan Department of Corrections. Mich. Comp. Laws § 791.231a(1). Regardless of the form of relief requested, the states and their departments are immune under the Eleventh Amendment from suit in the federal courts, unless the state has waived immunity or Congress has expressly abrogated Eleventh Amendment immunity by statute. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-101 (1984); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978); *O'Hara v. Wigginton*, 24 F.3d 823, 826 (6th Cir. 1994). Congress has not expressly abrogated Eleventh Amendment immunity by statute, *Quern v. Jordan*, 440 U.S. 332, 341 (1979), and the State of Michigan has not consented to civil rights suits in federal court. *Abick v. Michigan*,

803 F.2d 874, 877 (6th Cir. 1986). Therefore, the Michigan Parole Board, as part of the Michigan Department of Corrections, is immune from injunctive and monetary relief. *See Harrison v. Michigan*, 722 F.3d 768, 771 (6th Cir. 2013) (holding that both the MDOC and the parole board are entitled to immunity under the Eleventh Amendment); *Horton v. Martin*, 137 F. App'x 773, 775 (6th Cir. 2005) (Michigan Parole Board entitled to Eleventh Amendment immunity); *Lee v. Mich. Parole Bd.*, 104 F. App'x 490, 492 (6th Cir. 2004) (same); *Fleming v. Martin*, 24 F. App'x 258, 259 (6th Cir. 2001) (same). In addition, the Michigan Parole Board is not a "person" who may be sued under §1983 for money damages. *See Harrison*, 722 F.3d at 771.

According to the MDOC Offender Tracking Information System, Plaintiff was convicted of first-degree murder following a jury trial and was sentenced to life in prison without the possibility of parole on June 26, 1969. *See* http://mdocweb.state.mi.us/OTIS2/otis2profile.aspx?mdocNumber=111992. Since that time, Plaintiff has been serving his life sentence in Michigan. Although Plaintiff's sentence makes him permanently ineligible for parole, his sentence can be commuted by the governor of Michigan. The Michigan Parole Board has the power to review a prisoner's case and to recommend to the governor that a prisoner's sentence be commuted. *Lewis-El v. Sampson, et al.*, 649 F.3d 423, 423-24 (6th Cir. 2011) (*citing* Mich. Comp. Laws § 791.244). Plaintiff claims that in 1983, he was screened by Michigan Parole Board members pursuant to the guidelines in effect at that time. According to the guidelines, Plaintiff received a score of 22 years, which he understood to mean that the Parole Board would recommend commutation of Plaintiff's sentence to the governor after he served 22 years in prison.

Plaintiff's claim that he has a liberty interest in being recommended for commutation is without merit.[1] To state a claim under 42 U.S.C. § 1983, a plaintiff must allege

[1] A challenge to the fact or duration of confinement should be brought as a petition for habeas corpus and is not the proper subject of a civil rights action brought pursuant to § 1983. *See Preiser v. Rodriguez*, 411 U.S. 475, 484, 493

the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 549 (6th Cir. 2009). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

To establish a procedural due process violation, a petitioner must prove that (1) he was deprived of a protected liberty or property interest, and (2) such deprivation occurred without the requisite due process of law. *Club Italia Soccer & Sports Org., Inc. v. Charter Twp. of Shelby*, 470 F.3d 286, 296 (6th Cir. 2006); *see also Swihart v. Wilkinson*, 209 F. App'x 456, 458 (6th Cir. 2006). Plaintiff fails to raise a claim of constitutional magnitude because he has no liberty interest in the commutation of his sentence. The Supreme Court has recognized that an inmate has no constitutional or inherent right to commutation of his sentence. *See District Attorney's Office v. Osborne*, 129 S. Ct. 2308 Ohio *Adult Parol Auth. v. Woodard*, 523 U.S. 272, 280 (1998); *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981); *see also Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979) (holding that an inmate has no constitutional entitlement to release on parole). Clemency proceedings ordinarily are left to the discretion of the executive and "'are rarely, if ever, appropriate subjects for judicial review.'" *Woodard*, 523 U.S.

(1973). However, a prisoner that challenges parole or commutation procedures when not seeking immediate release may bring his claim under 42 U.S.C. § 1983. *See Wilkinson v. Dotson*, 544 U.S. 74, 83 (2005); *see also Thomas v. Eby*, 481 F.3d 434, 439-40 (6th Cir. 2007) (challenge to parole procedures may proceed under § 1983 because it does not automatically imply a shorter sentence); *see also Woodard v. Ohio Adult Parole Auth.*, 107 F.3d 1178, 1187 (6th Cir. 1997), *rev'd on other grounds*, 523 U.S. 272 (1998) (claim challenging constitutionality of a state's clemency or commutation proceeding is not a basis for habeas relief, but as a civil rights action, because it does not challenge the validity of a prisoner's confinement). Because Plaintiff appears to challenge the review process and does not seek release from prison, his action may proceed under § 1983.

(quoting *Michael v. Ghee*, 498 F.3d 372, 383 (6th Cir. 2007) (citing *Garner v. Jones*, 529 U.S. 244 (2000)). "Because of the fundamentally discretionary nature of gubernatorial commutation in Michigan, that test cannot be met." *Id.* The *Lewis-El* court reasoned that, because the results of commutation decisions are "so tied to the personal predilections of the person occupying the governor's office," it would be virtually impossible to show that any change in commutation rates was caused by changed commutation procedures. *Id.* at 427 (citing *Snodgrass v. Robinson*, 512 F.3d 999, 1002 (8th Cir. 2008)). For the reasons set forth in *Lewis-El*, Plaintiff's Ex Post Facto Clause claim is properly dismissed.

Finally, the Court notes that Plaintiff's claim is barred by the statute of limitations. State statutes of limitations and tolling principles apply to determine the timeliness of claims asserted under 42 U.S.C. § 1983. *Wilson v. Garcia*, 471 U.S. 261, 268-69 (1985). For civil rights suits filed in Michigan under § 1983, the statute of limitations is three years. *See* Mich. Comp. Laws § 600.5805(10); *Carroll v. Wilkerson*, 782 F.2d 44, 44 (6th Cir. 1986) (per curiam); *Stafford v. Vaughn*, No. 97-2239, 1999 WL 96990, at *1 (6th Cir. Feb. 2, 1999). Accrual of the claim for relief, however, is a question of federal law. *Collyer v. Darling*, 98 F.3d 211, 220 (6th Cir. 1996); *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984). The statute of limitations begins to run when the aggrieved party knows or has reason to know of the injury that is the basis of his action. *Collyer*, 98 F.3d at 220.[2]

[2] 28 U.S.C. § 1658 created a "catch-all" limitations period of four years for civil actions arising under federal statutes enacted after December 1, 1990. The Supreme Court's decision in *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004), which applied this federal four-year limitations period to a suit alleging racial discrimination under § 1981 does not apply to prisoner claims under 28 U.S.C. §1983 because, while § 1983 was amended in 1996, prisoner civil rights actions under § 1983 were not "made possible" by the amended statute. *Id.* at 382.

Plaintiff asserts that the policy was changed in 1992. Plaintiff would have served more than 22 years on his sentence at this point and would have been eligible for a recommendation to the governor that his sentence be commuted. Therefore, Plaintiff had reason to know of the "harms" done to him at the time the policy was changed. Hence, his claims accrued in 1992. However, Plaintiff did not file his complaint until 2019, well past Michigan's three-year limit. Moreover, Michigan law no longer tolls the running of the statute of limitations when a plaintiff is incarcerated. *See* Mich. Comp. Laws § 600.5851(9). Further, it is well established that ignorance of the law does not warrant equitable tolling of a statute of limitations. *See Rose v. Dole*, 945 F.2d 1331, 1335 (6th Cir. 1991); *Jones v. Gen. Motors Corp.*, 939 F.2d 380, 385 (6th Cir. 1991); *Mason v. Dep't of Justice*, No. 01-5701, 2002 WL 1334756, at *2 (6th Cir. June 17, 2002). Because the allegations in this case show that relief is barred by the applicable statute of limitations, Plaintiff's complaint is subject to dismissal for failure to state a claim. *Jones v. Bock*, 549 U.S. 199, 215 (2007).

Finally, the Court notes that Defendant's motion to dismiss for insufficient service of process (ECF No. 7) and Plaintiff's motion to respond to Defendant's motion to dismiss (ECF No. 11) will be denied as moot.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff's complaint will be dismissed for failure to state a claim under 28 U.S.C. § 1915A(b) and 42 U.S.C. § 1997e(c).

The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no

good-faith basis for an appeal. Should Plaintiff appeal this decision, the Court will assess the $505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is barred from proceeding in forma pauperis, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the $505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A judgment consistent with this opinion will be entered.

Dated: June 28, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE