In the United States Court of Federal Claims

No. 20-821C
(Filed: January 7, 2021)

TITUS L. RADCLIFF

Plaintiff

v

JUDGMENT

THE UNITED STATES

Defendant

Pursuant to the court's Order, filed January 6, 2021, granting defendant's motion to dismiss,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that the case is dismissed.

Lisa L. Reyes
Clerk of Court

By: Anthony Curry
Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $505.00.

In the United States Court of Federal Claims

No. 20-821C
Filed: January 6, 2021

TITUS L. RADCLIFF, Plaintiff, v. **UNITED STATES,** Defendant.	**Pro Se Plaintiff; Subject-Matter Jurisdiction; Motion to Dismiss; 28 U.S.C. § 1494; 28 U.S.C. § 1495.**

Titus L. Radcliff, pro se, Daytona Beach, FL.

Kelly A. Krystyniak, Trial Attorney, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC, for defendant. With her were **Patricia M. McCarthy**, Assistant Director, Commercial Litigation Branch, **Robert E. Kirshman, Jr.**, Director, Commercial Litigation Branch, and **Jeffery B. Clark**, Acting Attorney General, Civil Division.

ORDER

HORN, J.

Pro se plaintiff Titus L. Radcliff filed a rambling complaint with numerous unrelated allegations in the United States Court of Federal Claims. In the complaint, plaintiff bases his alleged claim for jurisdiction in this court on a host of statutes, including: 28 U.S.C. §§ 1491(a)(1) and (2) (2018), 28 U.S.C. § 1494 (2018), 28 U.S.C. § 1495 (2018), 28 U.S.C. § 1498(a) (2018), 28 U.S.C. § 1501 (2018), 28 U.S.C. § 1503 (2018), 28 U.S.C. § 1505 (2018), and 28 U.S.C. § 1507 (2018). Before explaining his basis for jurisdiction in this complaint, plaintiff makes a request to transfer a case of his from the United States Court of Appeals for Veterans Claims to this court to "correct the entire record."[1]

[1] Plaintiff's case in the United States Court of Appeals for Veterans Claims was filed in May 2020. See Radcliff v. Wilkie, No. 19-1010 (Vet. App. 2020). Previously plaintiff filed cases in the 7th Judicial Circuit Volusia County, Florida Fifth District Court of Appeals, and the United States Supreme Court, but all have been dismissed for lack of jurisdiction or mootness. In Re Titus L. Radcliff, No. 13-5189 (U.S. Aug. 22, 2013) pet. denied; In Re Titus L. Radcliff, No. 11-9300 (U.S. April 16, 2012) pet. denied; Radcliff v. Gadson, No. 2020-30025-CICI (Fla. 7th Cir. Ct. 2020); Radcliff v. State of Fla., No. 5D12-3398 (Fla.

time in service. Although 5 months would not have me vested in railroad service, because I'm short 13 months, but the 5 months would allow eligibility under 38 C.F.R. 3.750 Concurrent Compensation & would additionally show the working of all the current parties possessing my private property, which should be returned to me paid in full utilizing my group exemption status to show both parcels.

He further alleges jurisdiction under 28 U.S.C. § 1495 and states:

The unjust conviction & jailed under wrong S.S.N. and using as collateral found in 28 U.S.C. 1491 (a)(2) which would have been enforced if I drafted from my jail account to pay for copies from the copy machine owned by the County of Volusia, but material in law books, property by the U.S. Government found in the jail County of Volusia library which would constitute entrapment. Jailed 4 times for a total of 64 days. As investigated by the U.S. Federal District Court in Orlando, FL. Case # 6:20-CV-119-OrlGJK 1-24-2020 Found in the 3/30/2020 Abeyance order response, to case #19-1010. Although the federal district court did not state how many times I was incarcerated or the reason, but the total was 4 times, with 2 times under my half-brother Lenard A. Jackson's S.S.N. 594-05-8156. The other 2 were based on the 2 and pg. 1 where it (quietly) shows the number 16 by the Deputy Clerk Barbara Horeog 4/16/1998 where this document shows how the original illegal contract is enforced using days served in jail with payment made for child support on the side of this notice of delinquency (alleged). I was arrested on the Fl. East Coast Railroad Co. Property at Trademark Metal Recycling 402 3rd Street Holly Hill, FL 32117 on a short (private) road leading up to this address. I was put in handcuffs and put in a police car for not having my scrap metal covered with a tarp. This was Holly Hill Police Dept. in Holly Hill, FL.

Plaintiff also claims jurisdiction under 28 U.S.C. § 1505 and 28 U.S.C. § 1507. He claims that "this is cognizable because I Titus L. Radcliff and Shawndrea R. Radcliff are a group unannotated after 1946" and "to hear any suit in which my home was taken & given back to V.A.."

Finally, plaintiff requests

the court to sanction the railroad to give me the necessary time for my 20 year retirement, backpay of my paycheck, compute the amount of backpay for denied promotion as Engine House Foreman or General Mechanical Foreman, assist in retrieving my home and property 528/530 Bellevue Avenue, Daytona Beach, Florida, promote fairness for veterans with allowing me to be a heard advocate, assist in bringing to justice those involved in this modern barbaric treatment, to prosecute those who seek to retire when in trouble as was done done to me, of how they took my $12,000

simultaneously, but rather permits a plaintiff to choose among multiple venues to bring its complaint." (emphasis in original).

DISCUSSION

The court recognizes that plaintiff is proceeding pro se. When determining whether a complaint filed by a pro se plaintiff is sufficient to invoke review by a court, a pro se plaintiff is entitled to a more liberal construction of the pro se plaintiff's pleadings. See Haines v. Kerner, 404 U.S. 519, 520-21 (requiring that allegations contained in a pro se complaint be held to "less stringent standards than formal pleadings drafted by lawyers"), reh'g denied, 405 U.S. 948 (1972); see also Erickson v. Pardus, 551 U.S. 89, 94 (2007); Hughes v. Rowe, 449 U.S. 5, 9-10 (1980); Estelle v. Gamble, 429 U.S. 97, 106 (1976), reh'g denied, 429 U.S. 1066 (1977); Matthews v. United States, 750 F.3d 1320, 1322 (Fed. Cir. 2014); Jackson v. United States, 143 Fed. Cl. 242, 245 (2019), appeal docketed; Diamond v. United States, 115 Fed. Cl. 516, 524 (2014), aff'd, 603 F. App'x 947 (Fed. Cir.), cert. denied, 135 S. Ct. 1909 (2015). However, "there is no 'duty [on the part] of the trial court . . . to create a claim which [plaintiff] has not spelled out in his [or her] pleading . . . .'" Lengen v. United States, 100 Fed. Cl. 317, 328 (2011) (alterations in original) (quoting Scogin v. United States, 33 Fed. Cl. 285, 293 (1995) (quoting Clark v. Nat'l Travelers Life Ins. Co., 518 F.2d 1167, 1169 (6th Cir. 1975))); see also Bussie v. United States, 96 Fed. Cl. 89, 94, aff'd, 443 F. App'x 542 (Fed. Cir. 2011); Minehan v. United States, 75 Fed. Cl. 249, 253 (2007). "While a pro se plaintiff is held to a less stringent standard than that of a plaintiff represented by an attorney, the pro se plaintiff, nevertheless, bears the burden of establishing the Court's jurisdiction by a preponderance of the evidence." Riles v. United States, 93 Fed. Cl. 163, 165 (2010) (citing Hughes v. Rowe, 449 U.S. at 9; and Taylor v. United States, 303 F.3d 1357, 1359 (Fed. Cir.), reh'g and reh'g en banc denied (Fed. Cir. 2002)); see also Kelley v. Secretary, U.S. Dep't of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987) ("[A] court may not similarly take a liberal view of [] jurisdictional requirement[s] and set a different rule for pro se litigants only."); Schallmo v. United States, 147 Fed. Cl. 361, 363 (2020); Hale v. United States, 143 Fed. Cl. 180, 184 (2019) ("[E]ven pro se plaintiffs must persuade the court that jurisdictional requirements have been met." (citing Bernard v. United States, 59 Fed. Cl. 497, 499, aff'd, 98 F. App'x 860 (Fed. Cir. 2004))); Golden v. United States, 129 Fed. Cl. 630, 637 (2016); Shelkofsky v. United States, 119 Fed. Cl. 133, 139 (2014) ("[W]hile the court may excuse ambiguities in a pro se plaintiff's complaint, the court 'does not excuse [a complaint's] failures.'" (quoting Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995))); Harris v. United States, 113 Fed. Cl. 290, 292 (2013) ("Although plaintiff's pleadings are held to a less stringent standard, such leniency 'with respect to mere formalities does not relieve the burden to meet jurisdictional requirements.'" (quoting Minehan v. United States, 75 Fed. Cl. at 253)).

"Subject-matter jurisdiction may be challenged at any time by the parties or by the court sua sponte." Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004) (Fanning, Phillips & Molnar v. West, 160 F.3d 717, 720 (Fed. Cir. 1998)), reh'g and reh'g en banc denied (Fed. Cir. 2004), cert. denied, 545 U.S. 1127 (2005); see also St. Bernard Parish Gov't v. United States, 916 F.3d 987, 992-93 (Fed. Cir. 2019) ("[T]he court must

> Clapp v. United States, 127 Ct. Cl. 505, 117 F. Supp. 576, 580 (1954)) . . . . Third, the Court of Federal Claims has jurisdiction over those claims where "money has not been paid but the plaintiff asserts that he is nevertheless entitled to a payment from the treasury." Eastport S.S., 372 F.2d at 1007. Claims in this third category, where no payment has been made to the government, either directly or in effect, require that the "particular provision of law relied upon grants the claimant, expressly or by implication, a right to be paid a certain sum." Id.; see also [United States v.]Testan, 424 U.S. [392,] 401-02 [(1976)] ("Where the United States is the defendant and the plaintiff is not suing for money improperly exacted or retained, the basis of the federal claim-whether it be the Constitution, a statute, or a regulation-does not create a cause of action for money damages unless, as the Court of Claims has stated, that basis 'in itself . . . can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" (quoting Eastport S.S., 372 F.2d at 1009)). This category is commonly referred to as claims brought under a "money-mandating" statute.

Ont. Power Generation, Inc. v. United States, 369 F.3d 1298, 1301 (Fed. Cir. 2004); see also Samish Indian Nation v. United States, 419 F.3d 1355, 1364 (Fed. Cir. 2005); Twp. of Saddle Brook v. United States, 104 Fed. Cl. 101, 106 (2012).

To prove that a statute or regulation is money-mandating, a plaintiff must demonstrate that an independent source of substantive law relied upon "'can fairly be interpreted as mandating compensation by the Federal Government.'" United States v. Navajo Nation, 556 U.S. at 290 (quoting United States v. Testan, 424 U.S. at 400); see also United States v. White Mountain Apache Tribe, 537 U.S. at 472; United States v. Mitchell, 463 U.S. at 217; Blueport Co., LLC v. United States, 533 F.3d 1374, 1383 (Fed. Cir. 2008), cert. denied, 555 U.S. 1153 (2009). The source of law granting monetary relief must be distinct from the Tucker Act itself. See United States v. Navajo Nation, 556 U.S. at 290 (The Tucker Act does not create "substantive rights; [it is simply a] jurisdictional provision[] that operate[s] to waive sovereign immunity for claims premised on other sources of law (*e.g.*, statutes or contracts)."); see also Me. Community Health Options v. United States, 140 S. Ct. 1308, 1327-28 (2020). "'If the statute is not money-mandating, the Court of Federal Claims lacks jurisdiction, and the dismissal should be for lack of subject matter jurisdiction.'" Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin., 525 F.3d 1299, 1308 (Fed. Cir. 2008) (quoting Greenlee Cnty., Ariz. v. United States, 487 F.3d at 876); see also N.Y. & Presbyterian Hosp. v. United States, 881 F.3d at 881; Fisher v. United States, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (noting that the absence of a money-mandating source is "fatal to the court's jurisdiction under the Tucker Act"); Downey v. United States, 147 Fed. Cl. 171, 175 (2020) ("And so, to pursue a substantive right against the United States under the Tucker Act, a plaintiff must identify and plead a money-mandating constitutional provision, statute, or regulation." (citing Cabral v. United States, 317 F. App'x 979, 981 (Fed. Cir. 2008))); Jackson v. United States, 143 Fed. Cl. at 245 ("If the claim is not based on a 'money-mandating' source of law, then it lies beyond the

from a prior payment made to the government, or (3) based on federal constitutional, statutory, or regulatory law mandating compensation by the federal government for damages sustained. See United States v. Navajo Nation, 556 U.S. 289-90. None of plaintiff's alleged claims, including denial of unemployment and retirement, unjust conviction for stealing from the railway, as well as delinquent child support fall under the jurisdiction of the court. Nor does plaintiff explain how these claims would properly be claims under the Tucker Act. As noted by defendant, "Mr. Radcliff does not invoke any money-mandating statute, nor does he appear to seek any financial recovery from the United States."

Plaintiff also claims this court has jurisdiction pursuant to 28 U.S.C. § 1494. Under Section 1494, this court has "jurisdiction to determine the amount, if any, due to or from the United States by reason of any unsettled account of any officer or agent of, or contractor with, the United States," provided (1) claimant applies to the proper department for settlement, (2) three years have elapsed since plaintiff's application, and (3) claimant has not previously brought a suit on the claim in the United States. See id. The United States Court of Federal Claims lacks jurisdiction if plaintiff "fails to allege sufficient facts to establish jurisdiction, pursuant to 28 U.S.C. § 1494." Striplin v. United States, 100 Fed. Cl. 492, 498 (2011) (citing RCFC 12(b)(1)); see also Roberson v. United States, 115 Fed. Cl. 234, 241-42 (2014). Plaintiff cannot prevail on the basis of 28 U.S.C. § 1494 because plaintiff has not alleged that he is "officer or agent of, or contractor with, the United States."

To the extent plaintiff is trying to collect damages for an alleged unjust conviction and false imprisonment under 28 U.S.C. § 1495, he does not present any evidence to support his claim. In order to have a valid claim for unjust conviction and false imprisonment under 28 U.S.C. § 1495, plaintiff must "prove that his conviction has been reversed or set aside upon grounds of actual innocence, that he has been found not guilty during a new trial, or that he has been pardoned on the grounds of actual innocence, and that he did not commit the acts for which he has been charged," typically through a "court-issued certificate or pardon." Taylor v. United States, 130 Fed. Cl. 570, 572 (2016) (citing Brown v. United States, 42 Fed. Cl. 139, 141-42 (1998) and Vincin v. United States, 199 Ct. Cl. 762, 766, 468 F.2d 930, 933 (1972)). No certificate of innocence or proof of pardon was attached to plaintiff's complaint. Further, plaintiff faces an additional challenge in this court to recover if his convictions arose from state crimes, rather than federal. Section 1495 only permits plaintiffs to bring claims for damages in crimes committed "against the United States." See 28 U.S.C. § 1495.

Plaintiff further requests relief under 28 U.S.C. § 1498(a) for the nonpayment of patent royalties. In order to bring a claim under Section 1498(a), however, a plaintiff must show that the patent in question is being "used or manufactured for the United States without license of the owner thereof or lawful right to use or manufacture the same." Id. The statute 28 U.S.C. § 1498 "does not grant the Court of Federal Claims jurisdiction over a claim for alleged infringement of an unissued patent." Dell v. United States, 2020 WL 4876247, at *1, *2 (citing Martin v. United States, 99 Fed. Cl. 627, 632 (2011)). Plaintiff does not provide any details about an actual patent registration and merely alleges that

Finally, as noted above, plaintiff requests an existing case of his case be transferred from the United States Court of Appeals for Veterans Claims to this court or that the court exercise concurrent jurisdiction. Although under 28 U.S.C. § 1631 (2018) a federal court can transfer a case to another federal court when "there is a want of jurisdiction" in the original court, this court cannot compel the transfer of a case from another federal court, particularly a case that appears to be ongoing. Further, there is no authority which would permit this court to exercise jurisdiction over the Court of Appeals for Veterans Claims case.

CONCLUSION

For the reasons discussed above, because this court does not have jurisdiction to hear any of the claims raised by plaintiff, defendant's motion to dismiss for lack of subject matter jurisdiction is **GRANTED**. Plaintiff's complaint is **DISMISSED**. The Clerk of the Court shall enter **JUDGMENT** consistent with this Order.

IT IS SO ORDERED.

s/Marian Blank Horn
MARIAN BLANK HORN
Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TITUS L. RADCLIFF,

Petitioner,

v. Case No: 6:98-cv-488-Orl-22DCI

SECRETARY, DEPARTMENT OF CORRECTIONS, and ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.
_____/

ORDER

This cause is before the Court on Petitioner's Notice of Education Benefits Denial. (Doc. 19). This case was dismissed without prejudice on June 1, 1998. (Doc. 11). Petitioner's document is largely unintelligible, but he notes that he has been denied educational benefits. (Doc. 19 at 1-2). Petitioner does not appear to seek reopening of this habeas action, nor is he attempting to challenge a state court conviction, sentence or some condition of his confinement. Accordingly, it is **ORDERED** that Petitioner's notice shall be **STRICKEN** from the docket and returned to him by the Clerk of Court along with a copy of this Order.

The Clerk of Court is further directed to **SEND** Petitioner the standard § 2254 habeas form, a civil rights complaint form, and an affidavit of indigency form. If Petitioner is attempting to file a new habeas or civil rights action, he may complete one or both standard forms and submit them with an affidavit of indigency or the full filing

fee. Petitioner should not place the instant case number on the forms as this case is closed. The Clerk will assign a separate case number in the event Petitioner elects to pursue a new action.

DONE and **ORDERED** in Orlando, Florida on January 9, 2020.

ANNE C. CONWAY
United States District Judge

Copies furnished to:

Unrepresented Party
OrlP-3 1/9

"EXHIBIT 1"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TITUS LEE RADCLIFF,

Plaintiff,

v.

Case No: 6:20-cv-119-Orl-37GJK

MARK S. INCH, ROBERT L. WILKIE, STATE OF FLORIDA, COUNTY OF VOLUSIA and VETERANS ADMINISTRATION,

Defendants.
_____/

ORDER

This case is before the Court on review of Plaintiff Titus Lee Radcliff's Civil Rights Complaint (Doc. 1). Plaintiff is a prisoner proceeding *pro se*. (*Id.* at 2.) For the reasons discussed *infra*, the Complaint is dismissed.

I. FACTUAL BACKGROUND[1]

Plaintiff asserts Defendants Mark S. Inch, Secretary of the Florida Department of Corrections; Robert L. Wilkie, Secretary of the Department of Veterans Affairs; the State of Florida; Volusia County; and the Veterans Administration violated his Fifth and Fourteenth Amendment rights. (Doc. 1 at 2-3.) According to Plaintiff, he contested the

[1] It is difficult to decipher the facts as alleged by Plaintiff and what his claim(s) are. The factual background is largely taken from the sections of the Complaint labeled "Statement of Claim" and "Basis for Jurisdiction." *See* Doc. 1 at 5, 7-8.

payment of delinquent child support, which resulted in Shawana Perry ("Perry"), who was a Florida correctional officer, engaging in illegal activities.[2] (*Id.* at 5.) According to Plaintiff, Perry physically attacked him and removed mail from his mailbox and turned it over to her attorney, law enforcement officers, and officers of the court. (*Id.*) Plaintiff was ordered to pay child support in the amount of $98,000 from February 19, 1992 to December 19, 2005. (*Id.* at 9.)

At some point, Plaintiff's driving privileges were suspended for approximately eleven years, he was jailed for sixty-four days, and his retirement was cut. (*Id.* at 5, 7-9.) Plaintiff notes that he was taken into custody on multiple occasions between 1997 and 2004. (*Id.* at 5, 7.) Seemingly, in 1996, Plaintiff also lost his home that was secured by a Department of Veterans Affairs' loan without a hearing. (*Id.* at 10.)

Plaintiff filed a claim with the Office of the Attorney General Bureau of Victim Compensation for the State of Florida ("BVC") on February 11, 1992. (Doc. Nos. 1 at 5; 1-1 at 4-5.) On August 19, 2016, Plaintiff purchased a vehicle. (*Id.* at 8.) When he gave the salesman his driver's license, the salesman showed him a document from the BVC filed on September 23, 2014. (*Id.*) Plaintiff's purchase of the vehicle and receipt of disability benefits was delayed because of Defendant State of Florida's BVC document. (*Id.*) Plaintiff seeks monetary damages from Defendants.[3] (*Id.* at 9-10.)

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[2] It appears that Perry and Plaintiff had a child together. *See* Doc. 1 at 5.

[3] Subsequent to the filing of the Complaint, Plaintiff filed two Addenda to the Complaint in which it appears Plaintiff is attempting to name two additional Defendants – Florida East Coast Railway Company and Robert Ledoux, Vice President/General

II. LEGAL STANDARD

Under 28 U.S.C. § 1915A(a), the Court is obligated to screen such a prisoner civil rights complaint as soon as practicable. On review, the Court is required to dismiss the complaint (or any portion thereof) under the following circumstances:

> (b) Grounds for Dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
>
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b); *see also* 28 U.S.C. § 1915(e)(2)(B)(i) ("[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . is frivolous or malicious."). Additionally, the Court must liberally construe a plaintiff's *pro se* allegations. *Haines v. Kerner*, 404 U.S. 519 (1972).[4]

Counsel for Florida East Coast Railway Company. *See* Doc. Nos. 3, 4. Neither Addendum is sworn under penalty of perjury. Furthermore, the allegations in the Addenda are nonsensical with the exception of Plaintiff's allegations that they failed to give him his final paycheck from November 1996 and said he stole a key from them causing his incarceration. *See* Doc. Nos. 3 at 1-2; 4 at 2. The Court will not include the unsworn allegations in the factual background. However, the Court notes that there is no indication that either Florida East Coast Railway Company or Robert Ledoux are state actors so as to be liable under § 1983. Moreover, the four-year statute of limitations bars a claim that Defendants failed to pay him in 1996.

[4] A claim is frivolous if it is without arguable merit either in law or in fact. *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

III. ANALYSIS

Plaintiff fails to state a claim on which relief may be granted for several reasons. "To establish a claim under 42 U.S.C. § 1983, a plaintiff must prove (1) a violation of a constitutional right, and (2) that the alleged violation was committed by a person acting under color of state law." *Holmes v. Crosby*, 418 F.3d 1256, 1258 (11th Cir. 2005). Plaintiff has not alleged any action taken against him by Defendants Mark S. Inch, Robert L. Wilkie, Volusia County, or the Veterans Administration.

Moreover, assuming Plaintiff is attempting to assert a claim against Defendants Robert L. Wilkie and the Veterans Administration for taking his home without a hearing, the claim is barred by the statute of limitations. Florida's four-year statute of limitations applies to a claim of deprivation of rights brought pursuant to 42 U.S.C. § 1983. *See, e.g., Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003). "Federal law determines when the statute of limitations begins to run." *Joseph v. State Mut. Life Ins. Co. of Am.*, 196 F. App'x 760, 761 (11th Cir. 2006) (quoting *Lovett v. Ray*, 327 F.3d 1181, 1182 (11th Cir. 2003)). The limitations period "begins to run 'from the date the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights.'" *Joseph*, 196 F. App'x at 761 (quoting *Brown v. Georgia Bd. of Pardons & Paroles*, 335 F.3d 1259, 1261 (11th Cir. 2003)).

From the face of the Complaint, Plaintiff lost his home in 1996. Consequently, from the Complaint it appears beyond a doubt that Plaintiff can prove no set of facts to avoid

his claim being barred by the statute of limitations. Therefore, Plaintiff's claim raised more than twenty years after he lost his home is barred by the statute of limitations.

In addition, the Eleventh Amendment generally prohibits "federal courts from exercising subject matter jurisdiction over private party suits filed against a state or state officials." *Tennant v. Florida*, 111 F. Supp. 2d 1326, 1330 (S.D. Fla. 2000). The State of Florida has not waived its immunity from suit in federal courts. *See id.* (dismissing civil rights claim against the State of Florida based on the Eleventh Amendment); *see also McBrearty v. Koji*, 348 F. App'x 437, 440 (11th Cir. 2009) (applying Eleventh Amendment immunity to a Florida District Court of Appeal); *Zabriskie v. Court Admin.*, 172 F. App'x 906, 908-09 (11th Cir. 2006) (affirming dismissal of plaintiff's claims for monetary damages against Florida circuit court administrators and employees, finding that defendants were part of the state court system and therefore an arm of the state entitled to Eleventh Amendment immunity). Consequently, Plaintiff cannot proceed on a claim against the State of Florida because this Court lacks subject matter jurisdiction. Consequently, the instant action must be dismissed for failure to state a claim on which relief may be granted in accordance with the provisions of 28 U.S.C. §1915(e)(2)(B)(ii).[5]

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

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[5] Section 1915(e)(2)(B)(ii) provides that "[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal fails to state a claim on which relief may be granted."

1. This case is **DISMISSED** for failure to state a claim on which relief may be granted.

2. The Clerk of the Court is directed to enter judgment and close this case.

DONE and **ORDERED** in Orlando, Florida on March 12, 2020.

ROY B. DALTON JR.
United States District Judge

Copies furnished to:

Unrepresented Party

"EXHIBIT" 1

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

JOSEPH FRANK BOVA, II,

Appellant,

v.

Case No. 5D19-3199

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed February 5, 2021

Appeal from the Circuit Court
for Flagler County,
Terence R. Perkins, Judge.

Matthew J. Metz, Public Defender, and Steven N. Gosney, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Whitney Hartless, Assistant Attorney General, Daytona Beach, for Appellee.

SASSO, J.

Appellant, Joseph Frank Bova, II, appeals the judgment and sentence entered after a jury convicted him of first-degree murder with a firearm. Appellant argues a new trial is required because the trial court applied an incorrect legal standard when it denied his unequivocal request to represent himself. Because the trial court's stated reason for

denying Appellant's request was Appellant's capacity to successfully represent himself, as opposed to his capacity to make a knowing waiver of his right to counsel, we agree and reverse.

FACTS

On September 27, 2013, Appellant was charged by indictment with first-degree murder with a firearm. In September 2019, the case proceeded to trial. Prior to jury selection, defense counsel informed the court that Appellant wanted to represent himself and requested a *Faretta*[1] inquiry. Following Appellant's request, an exchange between the court and Appellant occurred in which it became clear that Appellant's request was primarily based on a disagreement with counsel regarding the direct examination of an expert witness. Specifically, Appellant was pursuing an insanity defense, and, according to the trial court, wanted to "push" the expert into saying that Appellant was not guilty by reason of insanity. In the trial court's view, asking a specific question in that regard would have been fatal to Appellant's defense. Accordingly, the trial court stated:

> [H]ere's the reason why I'm not granting your Faretta. . . . It's not the nature of the charge. It's not a fact that you had a history of mental illness. It's not the fact that you still have a mental illness based on all the experts that have looked at you. You are competent. I get that. The reason I'm not letting you represent yourself in this case is your disagreement with your attorneys is basically over one question on one witness. . . .

The following day, and after the jury was empaneled, the trial court provided additional explanation of its reason for denying Appellant's request, this time noting Appellant's previously diagnosed mental illness. Even so, the trial court again expressed

[1] *Faretta v. California*, 422 U.S. 806 (1975).

(b)

its concern that Appellant would ask the "wrong" questions and concluded that it would be fatal to his case to allow him to represent himself.

The trial commenced, and ultimately, the jury found Appellant guilty as charged. Defense counsel filed a motion for new trial based on Appellant's unequivocal request to represent himself, which was denied in an unelaborated order.

STANDARD OF REVIEW

We review the trial court's decision on a request for self-representation for an abuse of discretion. *Slinger v. State*, 219 So. 3d 163, 164 (Fla. 5th DCA 2017).

ANALYSIS

In *Faretta*, the United States Supreme Court held that a criminal defendant has a constitutional right to represent himself provided that the decision to do so is knowing, intelligent, and voluntary. This right, along with the Supreme Court's subsequent qualification of the right as expressed in *Indiana v. Edwards*, 554 U.S. 164 (2008), is codified at rule 3.111, which states in relevant part:

> Regardless of the defendant's legal skills or the complexity of the case, the court shall not deny a defendant's unequivocal request to represent himself or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel, and does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself.

Fla. R. Crim. P. 3.111(d)(3).

Importantly, and as the text of rule 3.111 conveys, the likelihood that a defendant would inadequately represent himself is not a valid reason to deny an unequivocal request for self-representation. *See Hooker v. State*, 152 So. 3d 799, 802 (Fla. 4th 2014); *see also Hooks v. State*, 286 So. 3d 163, 168 (Fla. 2019) ("[T]he ability to prepare a competent legal defense and technical legal knowledge (or lack thereof) are not relevant issues in a

(c)

self-representation inquiry." (citing *McKenzie v. State*, 29 So. 3d 272, 282 (Fla. 2010))). Instead, the test for permitting a defendant to represent himself is not whether the defendant is competent to represent himself effectively but whether he is competent to make a knowing and intelligent wavier. *Hooker*, 152 So. 3d at 802. Indeed, even if a trial court disagrees with a defendant's choice, the choice "must be honored out of that respect for the individual which is the lifeblood of the law." *Faretta*, 422 U.S. at 834.

Here, the record demonstrates the trial court failed to apply the appropriate legal standard as announced in *Faretta* and required by rule 3.111. First, the trial court's *Faretta* inquiry focused on the merit of Appellant's proposed trial strategy, rather than his competence to make a knowing and intelligent waiver of his right to counsel. Second, although the trial court found Appellant's request was unequivocal,[2] the trial court explicitly stated that the reason for denying Appellant's request was its perception that Appellant's trial strategy would be fatal to his case. Third, the trial court's post hoc clarification of its ruling, after a material stage in the proceedings had occurred, does not cure this error. And although we recognize the narrow exception recognized in *Indiana v. Edwards*, the trial court's comments do not dissuade this Court of its conclusion that the trial court applied a standard other than the one articulated in Florida Rule of Criminal Procedure 3.111.

In sum, Appellant made an unequivocal request to represent himself, which the trial court denied based on an incorrect application of both *Faretta* and rule 3.111(d)(3). Consequently, we determine the trial court abused its discretion in denying Appellant's

[2] We determine the trial court did not err in determining Appellant's request was unequivocal and reject the State's argument in this regard.

(D)

request and reverse and remand for a new trial. *See Tennis v. State*, 997 So. 2d 375, 379 (Fla. 2008) (noting that the denial of the right of self-representation is not amenable to harmless error analysis (citing *Goldsmith v. State*, 937 So. 2d 1253, 1256–57 (Fla. 2d DCA 2006))).

REVERSED and REMANDED.

EVANDER, C.J., and NARDELLA, J., concur.

"EXHIBIT" 17

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 2020 30025 CICI
DIVISION: 32

TITUS L. RADCLIFF,
Plaintiff,

vs.

JAVON WALDEN,
Defendant.
_____/

ORDER GRANTING MOTION TO SUBSTITUTE PARTY DEFENDANT

This cause having come on to be heard on March 4, 2021, on Defendant's Motion for Substitution of Party Defendant, and the Court being fully advised, it is hereby:

ORDERED AND ADJUDGED as follows:

1. Defendant's Motion is granted and Javon Walden is hereby substituted as Defendant in place of Charles Gadson.

2. The Clerk of Court is hereby instructed to amend the style of this action as set forth above.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida this 05 day of March, 2021.

3/5/2021 2:33 PM 2020 30025 CICI

e-Signed 3/5/2021 2:33 PM 2020 30025 CICI
MARY G. JOLLEY
CIRCUIT JUDGE

Copies furnished via U.S. Mail to:
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931 Vernon St
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Copies furnished via eService to:
Walter J. Snell, Esquire