

APPendix - c

20-2501

Mr. Anthony Keenan Sharp

#43363

SOUTH DAKOTA DEPARTMENT OF CORRECTIONS

178 Mickelson Drive

Yankton, SD 57078

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-2501

Anthony Keenan Sharp

Plaintiff - Appellant

v.

Lawrence Long, Judge at Second Judicial Circuit in his Individual Capacity; Bonnie Costain, Deputy State Attorney in her Invididual Capacity; Jennifer Hynek, Deputy State Attorney; Michael Wayne Hanson, Attorney in his Individual Capacity

Defendants - Appellees

Appeal from U.S. District Court for the District of South Dakota - Southern
(4:19-cv-04164-LLP)

JUDGMENT

Before KELLY, ERICKSON, and STRAS, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

November 10, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals

For The Eighth Circuit

Thomas F. Eagleton U.S. Courthouse

111 South 10th Street, Room 24.329

St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
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November 10, 2020

Mr. Anthony Keenan Sharp
SOUTH DAKOTA DEPARTMENT OF CORRECTIONS
43363
178 Mickelson Drive
Yankton, SD 57078

RE: 20-2501 Anthony Sharp v. Lawrence Long, et al

Dear Mr. Sharp:

Enclosed is a copy of the dispositive order in the referenced appeal. Please note that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. This court strictly enforces the 14 day period. **No grace period for mailing is granted** for pro-se-filed petitions. A petition for rehearing or a motion for an extension of time must be filed with the Clerk's office within the 14 day period.

Michael E. Gans
Clerk of Court

LMT

Enclosure(s)

cc: Mr. Matthew W. Thelen

District Court/Agency Case Number(s): 4:19-cv-04164-LLP

1-5-2021

To Whom It May Concern:

Clerk of the Circuit Courts

Ganns

On 11-23-2020 inmate Sharp, Anthony had legal mail Petition for Rehearing mailed out in a timely fashion. This letter documented and mailed from YCWC unit on 11-23-2020 at the cost of .80 cent.

Sincerely,



Cynthia Brown

Unit Coordinator

605-668-3489

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

ANTHONY KEENAN SHARP,

Plaintiff,

vs.

LAWRENCE LONG, JUDGE AT SECOND JUDICIAL CIRCUIT IN HIS INDIVIDUAL CAPACITY; BONNIE COSTAIN, DEPUTY STATE ATTORNEY IN HER INDIVIDUAL CAPACITY; JENNIFER HYNEK, DEPUTY STATE ATTORNEY; AND MICHAEL HANSON, ATTORNEY IN HIS INDIVIDUAL CAPACITY;

Defendants.

4:19-CV-04164-LLP

JUDGMENT

Pursuant to the Order Granting Plaintiff's Motion to Proceed In Forma Pauperis and 1915A Screening for Dismissal, it is

ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of defendants and against plaintiff, Anthony Keenan Sharp, dismissing the case without prejudice.

DATED May 8, 2020.

BY THE COURT:

ATTEST:
MATTHEW W. THELEN, CLERK

Matthew Thelen

Lawrence L. Piersol
Lawrence L. Piersol
United States District Judge

better suited as a petition for writ of habeas corpus under 28 U.S.C. § 2254. Accordingly, it is
ORDERED:

1. That Sharp's motion to proceed in forma pauperis, Doc. 2, is granted.
2. That Sharp's compliant is dismissed as frivolous because his claims are barred by the statute of limitations.
3. That judgment is entered in favor of defendants and against plaintiff.
4. That Sharp's remaining motion for appointment of counsel, Doc. 4, is denied as moot.
5. That the institution having custody of Sharp is directed that whenever the amount in Sharp's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to the Sharp's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full. DATED May 8, 2020.

BY THE COURT:

ATTEST:
MATTHEW W. THELEN, CLERK

Matthew Thelen

Lawrence L. Piersol
Lawrence L. Piersol
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ANTHONY KEENAN SHARP,

4:19-CV-04164-LLP

Plaintiff,

vs.

LAWRENCE LONG, JUDGE AT SECOND JUDICIAL CIRCUIT IN HIS INDIVIDUAL CAPACITY; BONNIE COSTAIN, DEPUTY STATE ATTORNEY IN HER INDIVIDUAL CAPACITY; JENNIFER HYNEK, DEPUTY STATE ATTORNEY; AND MICHAEL HANSON, ATTORNEY IN HIS INDIVIDUAL CAPACITY;

Defendants.

ORDER ALLOWING PLAINTIFF TO PROCEED IN FORMA PAUPERIS ON APPEAL

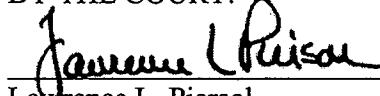
Plaintiff, Anthony Keenan Sharp, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Doc. 1. This Court dismissed Sharp's complaint and judgment was entered in favor of the defendants. Docs. 12, 13. Sharp filed a notice of appeal but did not move for leave to proceed in forma pauperis on appeal. Doc. 15. Under the Prison Litigation Reform Act (PLRA), a prisoner who "files an appeal in forma pauperis . . . [is] required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). This obligation arises "the moment the prisoner . . . files an appeal." *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). "When an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan." *Id.* (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). "[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full." *Id.* (citing *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

In *Henderson*, the Eighth Circuit set forth “the procedure to be used to assess, calculate, and collect” appellate filing fees in compliance with the PLRA. 129 F.3d at 483. First, the court must determine whether the appeal is taken in good faith. *Id.* at 485 (citing 28 U.S.C. § 1915(a)(3)). Then, so long as the prisoner has provided the court with a certified copy of his prisoner trust account, the court must “calculate the initial appellate partial filing fee as provided by § 1915(b)(1), or determine that the provisions of § 1915(b)(4) apply.” *Id.* The initial partial filing fee must be 20 percent of the greater of “(A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.” 28 U.S.C. § 1915(b)(1). Nonetheless, no prisoner will be “prohibited from . . . appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” 28 U.S.C. § 1915(b)(4). It appears that Sharp’s appeal is taken in good faith. Because Sharp’s prisoner trust account, Doc. 3, shows average monthly deposits of \$33.77 and an average monthly balance of \$21.59 the Court finds that § 1915(b)(1) applies and waives his initial partial filing fee. Accordingly, it is ORDERED:

1. That Sharp is allowed leave to proceed in forma pauperis on appeal and his initial partial filing fee is waived.
2. That the institution having custody of the Sharp is directed that whenever the amount in Sharp’s trust account, exclusive of funds available to him in his frozen account, exceeds \$10, monthly payments that equal 20 percent of the funds credited to the account the preceding month shall be forwarded to the United States District Court Clerk’s office pursuant to 28 U.S.C. § 1915(b)(2), until the appellate filing fee of \$505 is paid in full.

DATED July 6, 2020.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

MATTHEW W. THELEN, CLERK



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>ANTHONY KEENAN SHARP, Plaintiff, vs. LAWRENCE LONG, JUDGE AT SECOND JUDICIAL CIRCUIT IN HIS INDIVIDUAL CAPACITY; BONNIE COSTAIN, DEPUTY STATE ATTORNEY IN HER INDIVIDUAL CAPACITY; JENNIFER HYNEK, DEPUTY STATE ATTORNEY; AND MICHAEL HANSON, ATTORNEY IN HIS INDIVIDUAL CAPACITY; Defendants.</p>	<p>4:19-CV-04164-LLP ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS AND 1915A SCREENING FOR DISMISSAL</p>
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Plaintiff, Anthony Keenan Sharp, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983.

Doc. 1. Sharp moves for leave to proceed in forma pauperis and included his prisoner trust account report. Docs. 2 and 3. Sharp also moves for appointment of counsel. Doc. 4.

I. Motion to Proceed In Forma Pauperis

Sharp reports average monthly deposits of \$33.77 and an average monthly balance of \$21.59. Doc. 3. Under the Prison Litigation Reform Act (PLRA), a prisoner who "brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). "[W]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an

installment plan.’” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or
- (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

28 U.S.C. § 1915(b)(1)(A-B). Based on the information regarding Sharp’s prisoner trust account, the court grants Sharp leave to proceed in forma pauperis and waives the initial partial filing fee.

See 28 U.S.C. § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”).

In order to pay his filing fee, Sharp must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). The installments will be collected pursuant to this procedure. The Clerk of Court will send a copy of this order to the appropriate financial official at Sharp’s institution. Sharp remains responsible for the entire filing fee, as long as he is a prisoner. *See In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997).

II. 1915A Screening

A. Factual Background

Sharp sues defendants in their individual capacities. Doc. 1 at 2. Sharp claims that his incarceration is unlawful and that the defendants violated many of his rights during his state court jury trial. *See id.* at 4-6. In Count I, Sharp claims that Lawrence Long, a Judge for the Second Judicial Circuit for the state of South Dakota, withheld statements in court and conspired with defense counsel and the prosecutors. *Id.* at 4. Sharp alleges that Judge Long allowed a “tainted juror” to remain and it “potentially sway[ed] the remaining jury.” *Id.* Sharp believes that the “tainted juror” overheard a privileged conversation. *Id.* He argues that by letting the “tainted juror” to remain on the jury Judge Long violated his due process rights, and that Judge Long and the defendants committed conspiracy against him. *Id.*

In Count II, Sharp claims that he did not receive a fair trial because defendants, Jennifer Hynek and Bonnie Costain were mad about a complaint he sent to the Federal Bureau of Investigation (F.B.I.). *Id.* at 5. Sharp claims that Hynek and Costain referenced the complaint he filed, and it is “evidence of bias, retaliation, and discrimination.” *Id.* He argues that because Hynek and Costain were aware of the alleged violations committed by Judge Long that they have violated the United States Constitution, as well as the South Dakota Constitution. *Id.* He again claims that there was a conspiracy. *Id.*

Lastly, in Count III, Sharp claims that defendant Michael Hanson failed to protect him and violated his Sixth Amendment rights to effective assistance of counsel. *Id.* at 6. Sharp believes that Hanson conspired against him with the other defendants to commit criminal acts against him during the jury selection. *Id.* Sharp claims that Hanson told him that the other

defendants did not like him (Sharp) because of the F.B.I. complaint and that Hanson did not object to the comments made during trial. *Id.*

Under all counts that Sharp alleges he argues that these violations injured him because he is now unlawfully incarcerated. *See id.* at 4-6. Sharp seeks that this Court enter judgment in his favor and declare that the defendants violated his rights. *Id.* at 7. He asks that this Court release him from his unlawful incarceration and for damages of 1 million dollars. *Id.* Sharp attached some of the jury trial transcript to his complaint. Doc. 1-1. Sharp also attached a copy of the judgment and sentencing that is dated June 15, 2016. *Id.* at 2. Sharp's jury trial, where these alleged violations occurred, was held on March 8-9, 2016. *Id.* at 1.

B. Legal Standard

The court must assume as true all facts well pleaded in the complaint. *Estate of Rosenberg v. Crandell*, 56 F.3d 35, 36 (8th Cir. 1995). Civil rights and pro se complaints must be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Bediako v. Stein Mart, Inc.*, 354 F.3d 835, 839 (8th Cir. 2004). Even with this construction, “a pro se complaint must contain specific facts supporting its conclusions.” *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985); *see also Ellis v. City of Minneapolis*, 518 F. App’x 502, 504 (8th Cir. 2013). Civil rights complaints cannot be merely conclusory. *Davis v. Hall*, 992 F.2d 151, 152 (8th Cir. 1993); *Parker v. Porter*, 221 F. App’x 481, 482 (8th Cir. 2007).

A complaint “does not need detailed factual allegations . . . [but] requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). If it does not contain these bare essentials, dismissal is appropriate. *Beavers v. Lockhart*, 755 F.2d 657, 663 (8th Cir. 1985). *Twombly* requires that a complaint’s factual allegations must be “enough to raise a right to relief above the speculative

level on the assumption that all of the complaint's allegations are true." *Twombly*, 550 U.S. at 555; *see also Abdullah v. Minnesota*, 261 F. App'x 926, 927 (8th Cir. 2008) (noting that a complaint must contain either direct or inferential allegations regarding all material elements necessary to sustain recovery under some viable legal theory). Under 28 U.S.C. § 1915A, the court must screen prisoner complaints and dismiss them if they are "(1) frivolous, malicious, or fail[] to state a claim upon which relief may be granted; or (2) seek[] monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). The court will now assess each individual claim under 28 U.S.C. § 1915A.

C. Legal Analysis

The alleged violations in Sharp's complaint all occurred during his state criminal jury trial which occurred on March 8-9, 2016. Doc. 1-1 at 1-2. Sharp filed his § 1983 lawsuit on September 23, 2019. Doc. 1. A complaint may be dismissed by the court's own motion as frivolous under 28 U.S.C. § 1915(d) when it is apparent the statute of limitations has run. *Myers v. Vogal*, 960 F.2d 750, 751 (8th Cir. 1992). While § 1983 does not contain a specific statute of limitations, the Supreme Court has instructed courts to apply the most analogous statute of limitations to claims made under § 1983. *Wilson v. Garcia*, 471 U.S. 261, 266-68 (1985). South Dakota adopted a specific statute that provides that civil rights actions must be brought within three years after the alleged constitutional deprivation occurred or be barred. *Bell v. Fowler*, 99 F.3d 262, 266 (8th Cir. 1996) (referencing SDCL 15-2-15.2). Because the violations alleged occurred on March 8-9, 2016, and Sharp has not asserted a reason why the statute of limitations should be tolled, his claims are barred by the statute of limitations and must be dismissed. Further, because Sharp claims that his injury from the alleged violations is that he is being wrongfully incarcerated, his claims may be

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-2501

Anthony Keenan Sharp

Appellant

v.

Lawrence Long, Judge at Second Judicial Circuit in his Individual Capacity, et al.

Appellees

Appeal from U.S. District Court for the District of South Dakota - Southern
(4:19-cv-04164-LLP)

ORDER

The petition for rehearing by the panel is denied as untimely.

December 29, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

1-5-2021

To Whom It May Concern:

Clerk of the Circuit Courts

Ganns

On 11-23-2020 inmate Sharp, Anthony had legal mail Petition for Rehearing mailed out in a timely fashion. This letter documented and mailed from YCWC unit on 11-23-2020 at the cost of .80 cent.

Sincerely,



Cynthia Brown

Unit Coordinator

605-668-3489

FILED

JAN 11 2021

**MICHAEL GANS
CLERK OF COURT**

RECEIVED

JAN 11 2021

**U.S. COURT OF APPEALS
EIGHTH CIRCUIT**

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-2501

Anthony Keenan Sharp

Appellant

v.

Lawrence Long, Judge at Second Judicial Circuit in his Individual Capacity, et al.

Appellees

Appeal from U.S. District Court for the District of South Dakota - Southern
(4:19-cv-04164-LLP)

ORDER

The petition for rehearing by the panel is denied.

January 13, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans