Nos. 21-3612

FILED
Dec 30, 2022
DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WALTER HARRIS,

Plaintiff-Appellant,

v.

NEIL TURNER, Warden,

Defendant-Appellee.

ORDER

Before: McKEAGUE, WHITE, and READLER, Circuit Judges.

Walter Harris, a pro se Ohio prisoner, petitions this court to rehear its August 2, 2022, order affirming the district court's judgment dismissing his 42 U.S.C. § 1983 complaint pursuant to the Prison Litigation Reform Act, 28 U.S.C. §§ 1915(e)(2)(B) and 1915A. We have reviewed the petition and conclude that we did not overlook or misapprehend any point of law or fact in affirming the district court's judgment. *See* Fed. R. App. P. 40(a)(2).

Accordingly, Harris's petition for rehearing is DENIED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Specifically, the district court determined that Harris's claim was barred by the doctrine of res judicata and Ohio's two-year statute of limitations for § 1983 claims.

On appeal, Harris challenges the district court's dismissal of his complaint.

We review de novo a district court's decision to dismiss a complaint under §§ 1915(e) and 1915A. *Grinter v. Knight*, 532 F.3d 567, 571-72 (6th Cir. 2008). The PLRA "requires district courts to screen and dismiss complaints that are frivolous or malicious, that fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief." *Id.* at 572 (citing 28 U.S.C. § 1915A(b)); *see also* 28 U.S.C. § 1915(e)(2)(B). We review the dismissal of claims at screening under the standard set out in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007). *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at570). We construe a pro se litigant's pleadings liberally. *See Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011).

The district court properly dismissed Harris's complaint for failure to state a claim. The statute of limitations period applicable to claims for bodily injuries brought under § 1983 in Ohio is two years. *See J. Endres v. Ne. Ohio Med. Univ.*, 938 F.3d 281, 292 (6th Cir. 2019). Sua sponte dismissal may be appropriate where a statute of limitations defect is obvious from the face of the complaint. *See, e.g.*, *Haskell v. Washington Township*, 864 F.2d 1266, 1273 n.3 (6th Cir. 1988); *Dellis v. Corr. Corp. of Am.*, 257 F.3d 508, 510-11 (6th Cir. 2001). "[T]he statute of limitations period begins 'when the plaintiff knows or has reason to know of the injury which is the basis of his action.'" *J. Endres*, 938 F.3d at 292 (quoting *Sevier v. Turner*, 742 F.2d 262, 273 (6th Cir. 1984)).

The event giving rise to Harris's § 1983 claim occurred on April 28, 2017, when he was allegedly extradited to California without the benefit of a pretransfer hearing. Harris's complaint indicates that he was aware of his alleged injury when it occurred and that he exhausted his administrative remedies during the first half of 2018. However, Harris did not file his complaint until December 31, 2020, at the earliest, when he signed his complaint. Harris's claim is therefore

time-barred, and his complaint does not suggest any circumstances that would entitle him to equitable tolling of the limitations period. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). Although the district court's sua sponte dismissal did not afford Harris an opportunity to present any equitable-tolling arguments, Harris does not argue that he is entitled to equitable tolling in his appellate brief, so he has forfeited any argument to that effect. *See Watkins v. Healy*, 986 F.3d 648, 667 (6th Cir.), *cert. denied*, 142 S. Ct. 348 (2021).

In any event, even if Harris were to show grounds for equitable tolling, he still failed to state a claim upon which relief could be granted because his claim is barred by the doctrine of res judicata, which is also referred to as "claim preclusion." The doctrine of res judicata provides that "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *U.S. ex rel. Sheldon v. Kettering Health Network*, 816 F.3d 399, 414 (6th Cir. 2016) (quoting *Montana v. United States*, 440 U.S. 147, 153 (1979)). Under Ohio law, a subsequent action is barred by the doctrine of res judicata when there is

> (1) a prior final, valid decision on the merits by a court of competent jurisdiction; (2) a second action involving the same parties, or their privies, as the first; (3) a second action raising claims that were or could have been litigated in the first action; and (4) a second action arising out of the transaction or occurrence that was the subject matter of the previous action.

Id. at 415 (citation omitted).

In this case, Harris acknowledged that he previously filed a federal lawsuit against Turner arising from the same underlying incident—his allegedly illegal extradition to California in April 2017. *See Harris v. Turner*, No. 3:18-cv-1627 (N.D. Ohio Sept. 29, 2020). The record in that case reflects that the district court dismissed Harris's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A dismissal for failure to state a claim under Rule 12(b)(6) is a "decision on the merits" for preclusive purposes. *Kettering Health Network*, 816 F.3d at 415. Although Harris alleged that he made the "wrong legal arguments" in his prior lawsuit, the doctrine of res judicata precludes a litigant from bringing "a second action raising claims that . . . could have been litigated in the first action." *Id.* All four elements of res judicata are satisfied in this case.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

WALTER HARRIS,

Plaintiff,

v.

NEIL TURNER, WARDEN,

Defendant.

CASE NO. 3:21 CV 122

JUDGE JAMES R. KNEPP II

JUDGMENT ENTRY

In accordance with the Court's accompanying Memorandum Opinion and Order, this action is dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A. The Court further certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision cannot be taken in good faith.

s/ James R. Knepp II
UNITED STATES DISTRICT JUDGE

Harris v. Turner, 2021 U.S. Dist. LEXIS 102145

Copy Citation

United States District Court for the Northern District of Ohio, Western Division

June 1, 2021, Filed
CASE NO. 3:21 CV 122

Reporter
2021 U.S. Dist. LEXIS 102145 * | 2021 WL 2210563

WALTER HARRIS, Plaintiff, v. NEIL TURNER, WARDEN , Defendant.

Subsequent History: Motion denied by Harris v. Turner, 2021 U.S. App. LEXIS 38511 (6th Cir., Dec. 29, 2021)
Affirmed by Harris v. Turner, 2022 U.S. App. LEXIS 21337 (6th Cir. Ohio, Aug. 2, 2022)

Core Terms

claim preclusion, statute of limitations, lawsuit, prior lawsuit, sua sponte, pro se, allegations, extradition, merits, rights, failure to state a claim, face of the complaint, fail to state a claim, subject to dismissal, in forma pauperis, final judgment, good faith, CERTIFIES, expired, parties, reasons, screen

Counsel: [*1] Walter Harris, Plaintiff, Pro se, Marion, OH.

Judges: James R. Knepp II, UNITED STATES DISTRICT JUDGE.

Opinion by: James R. Knepp II

Opinion

MEMORANDUM OPINION AND ORDER

BACKGROUND

Pro se Plaintiff Walter Harris has filed a prisoner civil rights Complaint in this matter pursuant to 42 U.S.C. § 1983. (Doc. 1). The basis for his Complaint is that on April 28, 2017, he was extradited to Los Angeles from the North Central Correctional Complex in Ohio without a pretransfer hearing. Seeking compensation, he contends this violated his rights under the Interstate Agreement on Detainers. *See id.* at 3, ¶II(B); at 4, ¶IV(A); at 5, ¶VI. In his Complaint, Plaintiff acknowledges he previously filed a lawsuit in federal court challenging his 2017

extradition to Los Angeles, and that prior lawsuit was dismissed on the merits. *See* Doc. 1, at 9; *Harris v. Turner*, Case No. 3:18 CV 1627 (N.D. Ohio Nov. 29, 2018) (Carr, J.).

With his current Complaint, the Plaintiff filed a motion to proceed *in forma pauperis*. (Doc. 2). That motion has been granted by separate Order.

For the reasons discussed below, Plaintiff's Complaint is dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

STANDARD OF REVIEW

Federal district courts are expressly required, under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, to screen all *in forma pauperis* actions and all prisoner actions seeking redress from governmental [*2] defendants, and to dismiss before service any such action the court determines is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010).

In order to survive a dismissal for failure to state a claim, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Id.* (holding that the dismissal standard articulated in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) governs dismissals for failure to state a claim under §§ 1915(e)(2)(B) and 1915A). The complaint's allegations "must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations . . . are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555. *Pro se* complaints are liberally construed in determining whether they state a claim. *See Boag v. MacDougall*, 454 U.S. 364, 365, 102 S. Ct. 700, 70 L. Ed. 2d 551 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972).

DISCUSSION

Upon review, the Court finds Plaintiff's Complaint must be dismissed pursuant to §§ 1915(e)(2)(B) and 1915A.

First, Plaintiff's Complaint is subject to dismissal based on claim preclusion.

Under the doctrine of claim preclusion, once a court renders a valid and final judgment in an action, the parties are barred from later relitigating any claims that were [*3] actually litigated or that could have been raised in the earlier action. *Allen v. McCurry*, 449 U.S. 90, 94, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980); *Wheeler v. Dayton Police Dep't*, 807 F.3d 764, 766 (6th Cir. 2015). Claim preclusion applies where there is (1) a final judgment on the merits in a prior

action; (2) a subsequent suit between "the same parties or their privies" as the first; (3) an issue in the second lawsuit that should have been raised in the first lawsuit; and (4) the claims in both lawsuits arise from the same transaction. *Wheeler*, 807 F.3d at 766.

All of the requirements for claim preclusion are satisfied here. Plaintiff previously brought a lawsuit against Defendant arising from the same transaction (his 2017 extradition to Los Angeles), and the case was dismissed on the merits. *See Harris v. Turner*, Case No. 3:18 CV 1627 (N.D. Ohio). Although Plaintiff indicates he made the "wrong legal arguments" in his prior lawsuit (*see* Doc. 1, at 9), the doctrine of claim preclusion precludes him from asserting a new claim here, as his asserted claim could and should have been raised in his prior lawsuit.

Accordingly, Plaintiff's complaint is subject to summary dismissal. *See, e.g., Hill v. Elting*, 9 F. App'x 321, 321 (6th Cir. 2001) (upholding *sua sponte* dismissals of claims under § 1915(e) when claims were barred by prior lawsuits); *see also Gordon v. Harry*, 2020 U.S. Dist. LEXIS 43591, 2020 WL 1159158, at *1 (W.D. Mich.) (court may consider *res judicata* or claim preclusion [*4] in determining whether complaint fails to state a claim for purposes of § 1915(e)), *report and recommendation adopted*, 2020 U.S. Dist. LEXIS 41003, 2020 WL 1157654; *Ezekoye v. Ocwen Fed. Bank FSB*, 179 F. App'x 111, 114 (3d Cir. 2006) (finding claim preclusion a proper ground for dismissal under § 1915(e)(2)(B)).

Second, Plaintiff's Complaint is subject to dismissal because it is apparent on the face of the Complaint that the statute of limitations expired before Plaintiff filed this action.

Although the statute of limitations is an affirmative defense, a complaint can be dismissed on screening where its allegations on their face demonstrate the claim would be barred by the applicable statute of limitations. *See Alston v. Tenn. Dep't of Corr.*, 28 Fed. Appx. 475, 2002 WL 123688, at *1 (6th Cir.) ("[b]ecause the statute of limitations defect was obvious from the face of the complaint, *sua sponte* dismissal of the complaint was appropriate"); *Fraley v. Ohio Gallia Cty.*, 1998 U.S. App. LEXIS 28078, 1998 WL 789385, at *1 (6th Cir.) (affirming *sua sponte* dismissal of *pro se* § 1983 action filed after two-year statute of limitations for bringing such an action had expired).

The statute of limitations for civil rights claims under 42 U.S.C. § 1983 arising in Ohio is two years. *LRL Props. v. Portage Metro Housing Auth.*, 55 F.3d 1097, 1105 (6th Cir. 1995). Plaintiff complains about his transfer in April 2017 (Doc. 1, at ¶IV(C)), and notes he pursued administrative remedies in the first half of 2018 (Doc. 1, ¶VII(E))[1], but he did not file this action until January 15, 2021. As such, this action must [*5] be dismissed as untimely.

CONCLUSION

For the foregoing reasons, good cause appearing, it is

ORDERED that Plaintiff's complaint is dismissed in accordance with 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; and the Court

CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

/s/ *James R. Knepp II*

UNITED STATES DISTRICT JUDGE

JUDGMENT ENTRY

In accordance with the Court's accompanying Memorandum Opinion and Order, this action is dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A. The Court further certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision cannot be taken in good faith.

/s/ James R. Knepp II

UNITED STATES DISTRICT JUDGE

Footnotes

- [1]
  The limitations period is tolled while a prisoner exhausts available state administrative remedies. *See Brown v. Morgan*, 209 F.3d 595, 596 (6th Cir. 2000); *Waters v. Evans*, 105 F. App'x 827, 829 (6th Cir. 2004).