APPENDIX

TABLE OF CONTENTS

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2114

ANTOINE POTEAT,
Appellant

v.

GERALD LYDON, Individually and Official Capacity of Pennsylvania State Police; CHAD LABOUR, Individually and Official Capacity of Pennsylvania State Police; NICHOLAS GOLDSMITH, Individually and Official Capacity of Pennsylvania State Police; JUSTIN JULIUS, Individually and Official Capacity of Pennsylvania State Police; GREGORY EMERY, Individually and Official Capacity of Pennsylvania State Police; BRIAN KONOPKA, Individually and Official Capacity of Pennsylvania State Police; HEATHER GALLAGUER, Individually and Official Capacity of Lehigh County District Attorney's Office; BETHANY ZAMPOGNA, Individual and Official Capacity of Lehigh County District Attorney's Office; JOSEPH STAUFFER, Individually and Official Capacity of Lehigh County District Attorney's Office; JAMES MARTIN, Individually and Official Capacity of Lehigh County District Attorney's Office; JARED HANNA, Individually and Official Capacity of Lehigh County District Attorney's Office; EDWARD RESSLER, Individually and Official Capacity of Lehigh County District Attorney's Office

---

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 5:21-cv-03117)
District Judge: Honorable Joseph F. Leeson, Jr.

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
October 10, 2023
Before: JORDAN, CHUNG, and NYGAARD, Circuit Judges

(Opinion filed: October 11, 2023)

OPINION*

PER CURIAM

Pro se appellant Antoine Poteat appeals the District Court's dismissal of his constitutional and tort claims against numerous defendants from the Pennsylvania State Police ("PSP") and the Lehigh County District Attorney's Office ("DA") following a traffic stop and subsequent criminal proceedings. For the reasons that follow, we will affirm.

I.

On February 20, 2013, PSP Trooper Gerald Lydon stopped Antoine Poteat's car. During the traffic stop, Lydon allegedly smelled an odor of marijuana coming from the vehicle. Lydon issued a warning to Poteat for the traffic violation and told Poteat he was free to leave. Lydon then asked Poteat if there was anything illegal in his car. Poteat said there was not. After Poteat refused Lydon's request for permission to search his car, a PSP canine was walked around its exterior. Lydon told Poteat that the canine "alerted" to the car. Poteat then agreed to go to the PSP barracks to wait while his car was towed and a search warrant was issued. Before leaving for the barracks, Poteat allegedly saw an officer move something from the armrest to the passenger seat of his car.

Lydon and other officers found bags of suspected cocaine and marijuana in Poteat's car after a magistrate judge approved the search warrant. On February 26, 2013,

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Lydon filed charges against Poteat and an arrest warrant was issued. Lydon included the extradition code "SSO" or "Surrounding States Only," although Poteat lived in Virginia. Poteat was arrested in Maryland in May 2014 and was first extradited to Virginia for other charges and then extradited to Pennsylvania in July 2014. Poteat alleges that there was no detainer or extradition proceedings for bringing him to Pennsylvania. On September 21, 2015, Poteat was convicted of charges arising out of the search in a non-jury trial and subsequently sentenced to 5-10 years in prison. The Pennsylvania Superior Court affirmed the convictions and the Pennsylvania Supreme Court and United States Supreme Court both denied further review.

Poteat filed a PCRA petition on September 21, 2018, alleging a speedy trial violation under Rule 600 of the Pennsylvania Rules of Criminal Procedure. The PCRA court granted the motion. Poteat's sentence was vacated on July 8, 2019, and his charges were dismissed. On July 9, 2019, Poteat was released from prison.

II.

On July 12, 2021, Poteat filed a complaint in the Eastern District of Pennsylvania, alleging 4th and 14th Amendment claims and state tort claims against the DA, PSP, and numerous individuals from the PSP and DA in their individual and official capacities. The defendants moved to dismiss the complaint and the District Court dismissed in part, giving Poteat leave to file an amended complaint. On March 8, 2022, Poteat filed an amended complaint alleging malicious prosecution, intentional infliction of emotional distress, due process violations, abuse of process, deprivation of due process with respect to property and fabrication of evidence, conspiracy, supervisory liability and failure to

intervene, an equal protection violation, and wrongful extradition.[1] The defendants again moved to dismiss. On May 20, 2022, the District Court granted the defendants' motions, dismissing Poteat's amended complaint with prejudice and without leave to amend a second time. On June 13, 2022, Poteat filed a motion for reconsideration and a timely notice of appeal. This Court stayed the appeal pending disposition of the reconsideration motion. The District Court granted the motion for reconsideration as to the malicious prosecution claim only and denied reconsideration of the other claims. After reconsideration, the District Court determined the malicious prosecution claim was appropriately dismissed with prejudice, while altering its analysis for the dismissal.[2] Poteat appeals the District Court's decision on most of his federal claims pursuant to § 1983 and his state tort law claims.[3]

---

[1] Poteat's first amended complaint, filed March 8, 2022, supersedes his original complaint, filed July 12, 2021. See Garrett v. Wexford Health, 938 F.3d 69, 82 (3d Cir. 2019). In his amended complaint, Poteat removed the PSP and DA as named defendants in the caption, removed all the individual defendant names he included in the original complaint's fact section except for some limited allegations as to Lydon, and did not incorporate the facts from his original complaint. Even if Poteat did seek to restate his claims against the PSP and DA, those claims would fail for largely the reasons discussed in the text.

[2] The fact that the District Court, in disposing of the motion for reconsideration, provided alternative analysis does not affect our jurisdiction over the order dismissing the complaint. See United States v. Holy Land Found. for Relief & Dev., 722 F.3d 677, 683–84 (5th Cir. 2013); cf. FTC v. Minneapolis-Honeywell Reg. Co., 344 U.S. 206, 211–12 (1952); Thomas v. Att'y Gen., 625 F.3d 134, 140 (3d Cir. 2010). However, if appellant wanted to appeal the District Court's order addressing the motion for reconsideration, he was required to file a new or amended notice of appeal. See Fed. R. App. P. 4(a)(4)(B)(ii). Since he did not, we lack jurisdiction over challenges to the latter order. See Carrascosa v. McGuire, 520 F.3d 249, 253-54 (3d Cir. 2008).

[3] In his appellate brief, Poteat does not dispute the District Court's dismissal of his claims

III.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's dismissal of Poteat's claims under Federal Rule of Civil Procedure 12(b)(6). See Castleberry v. STI Grp., 863 F.3d 259, 262-63 (3d Cir. 2017). To survive a motion to dismiss, a complaint must allege facts sufficient to "state a claim to relief that is plausible on its face." See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Pleadings of pro se plaintiffs are construed liberally. See Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 244 (3d Cir. 2013). But "pro se litigants still must allege sufficient facts in their complaints to support a claim." Id. at 245. We "may affirm a result reached by the district court on different reasons, as long as the record supports the judgment." Guthrie v. Lady Jane Collieries, Inc., 722 F.2d 1141, 1145 n.1 (3d Cir. 1983).[4]

IV.

We agree with the District Court's dismissal of all claims against the PSP

---

for deprivation of property or failure to intervene. Therefore, he has forfeited any challenge to the District Court's resolution of those claims. See In re Wettach, 811 F.3d 99, 115 (3d Cir. 2016) (stating that arguments not developed in the appellant's opening brief are forfeited).

[4] The District Court largely relied on the statute of limitations and inadequate pleadings to dismiss Poteat's claims, while this opinion primarily focuses on immunity. Although immunity is considered to be an affirmative defense, "a complaint may be subject to dismissal under Rule 12(b)(6) when an affirmative defense . . . appears on its face." Leveto v. Lapina, 258 F.3d 156, 161 (3d Cir. 2001) (quoting ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994)). The same is true as to the statute-of-limitations defense. See Wisniewski v. Fisher, 857 F.3d 152, 157 (3d Cir. 2017).

defendants. First, the District Court was correct in concluding that Poteat's constitutional claims against the PSP defendants in their official capacities were barred by sovereign immunity. See Frein v. Pa. State Police, 47 F.4th 247, 257 (3d Cir. 2022); A.W. v. Jersey City Pub. Schs., 341 F.3d 234, 238 (3d Cir. 2003).

Next, the District Court was correct in dismissing the constitutional claims against the PSP defendants in their individual capacities. In his amended complaint, Poteat did not name or ascribe specific wrongful acts to individual defendants, other than listing the names of the defendants in the caption and making limited factual allegations about Lydon. Because Poteat did not assert that specific defendants had personal involvement in the alleged wrongdoing, he failed to state plausible claims against the individual defendants. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (indicating that plaintiff must allege personal involvement with appropriate particularity). Even if Poteat had pled sufficient facts stating a claim against Lydon, all Lydon's actions took place before Poteat's conviction in 2015, and therefore Poteat's claims against him would be time barred since the two-year statute of limitations applicable to § 1983 claims in Pennsylvania had long since expired when Poteat filed his complaint in 2021.[5] See

[5] Although Poteat argued that he was entitled to an exception to the statute of limitations because he was unable to file his complaint from prison, incarceration does not toll the statute of limitations. See Sandutch v. Muroski, 684 F.2d 252, 254 (3d Cir. 1982) (per curiam); 42 Pa. Cons. Stat. § 5533. As for equitable tolling, Poteat did not offer more than conclusory arguments for application of this argument on appeal and therefore we need not consider it. See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 145-46 (3d Cir. 2017) (noting that "we have consistently refused to consider ill-developed arguments or those not properly raised and discussed in the appellate briefing"). The continuing violation doctrine is inapplicable because no acts relevant to these claims took place within two years of the date Poteat filed his complaint, and the

Wisniewski v. Fisher, 857 F.3d 152, 157 (3d Cir. 2017); see also Estate of Lagano v. Bergen Cty. Prosecutor's Office, 769 F.3d 850, 861 (3d Cir. 2014) (illegal-search claim accrues when plaintiff is aware of harm). Moreover, to the extent that any claim against Lydon might be subject to the deferred-accrual rule of Heck v. Humphrey, 512 U.S. 477 (1994), Poteat has failed to state a claim. As the District Court explained, he appears to concede that the criminal prosecution was begun with probable cause, see ECF No. 52 at 12, which is fatal to a malicious prosecution claim against Lydon (who had no further role), see Thompson v. Clark, 142 S. Ct. 1332, 1337–38 (2022), and he has presented no factual allegations suggesting that the evidence was fabricated, cf. Halsey v. Pfeiffer, 750 F.3d 273, 293 (3d Cir. 2014).

Finally, the District Court was correct in dismissing Poteat's state law tort claims against the PSP defendants. State sovereign immunity bars these suits against the Commonwealth and its employees acting within the scope of their duties, as the PSP employees were, and the limited negligence exceptions to sovereign immunity do not apply as Poteat alleged only intentional torts. See 1 Pa. Cons. Stat. § 2310; 42 Pa. Cons. Stat. §§ 8521, 8522.

We also agree with the District Court's dismissal of all claims against the DA defendants. First, the constitutional claims against the DA defendants in their official capacities are treated as suits against the entity, and Poteat's complaint did not state a

---

doctrine does not apply just because earlier acts continue to have ill effects. See Montanez v. Sec'y Pa. Dep't of Corr., 773 F.3d 472, 481 (3d Cir. 2014).

plausible claim against it. See Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). The DA might have been subject to liability for § 1983 claims if its official policy or custom caused Poteat's deprivation of rights, but Poteat's allegations in this regard are directed toward the PSP, not the DA, and he therefore did not adequately state a § 1983 claim against the DA. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694-95 (1978); see also City of Caton v. Harris, 489 U.S. 378, 385 (1989).

Next, the District Court was correct in dismissing Poteat's constitutional claims against the DA defendants in their individual capacities. The constitutional claims against the DA defendants are barred at the outset by absolute prosecutorial immunity because the DA defendants were acting in their role as advocates in pursuing Poteat's extradition and criminal prosecution. See Imbler v. Pachtman, 424 U.S. 409, 431 (1976); Ross v. Meagan, 638 F.2d 646, 648-49 (3d Cir. 1981) (per curiam), overruled on other grounds by Neitzke v. Williams, 490 U.S. 319, 328 (1989).

Last, the District Court was correct in dismissing Poteat's state law tort claims against the DA defendants. In Pennsylvania, common law tort immunity protects "high public officials," including district attorneys, from suit when acting in the scope of their official duties and authority, as the DA defendants were in pursuing Poteat's extradition and prosecution. See Heller v. Fulare, 454 F.3d 174, 177 (3d Cir. 2006); Durham v. McElynn, 772 A.2d 68, 69-70 (Pa. 2001).

For these reasons, we will affirm.[6]

[6] To the extent that it is necessary, we grant Poteat permission to file an overlong reply brief, and we have considered all his filings.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANTOINE POTEAT, Plaintiff,	:	
v.	:	No. 5:21-cv-03117
GERALD LYDON, *et al.*, Defendants.	:	

OPINION
Defendants' Motions to Dismiss, ECF Nos. 40 and 41 – Granted

Joseph F. Leeson, Jr.
United States District Judge

May 20, 2022

I. INTRODUCTION

This matter involves claims arising under 42 U.S.C. § 1983 brought by pro se Plaintiff Antoine Poteat against more than a dozen Defendants, many of whom are employed by either the Pennsylvania State Police or the Lehigh County District Attorney's Office. In his Amended Complaint, Poteat raises several tort and constitutional claims for relief. Poteat further alleges that Defendants conspired to violate his rights. Defendants now move to dismiss the Amended Complaint in its entirety.

Following a review of the Amended Complaint and the Defendants' motions to dismiss, this Court grants both motions and dismisses the Amended Complaint with prejudice.

II. BACKGROUND

The background is taken, in large part, from allegations in Poteat's Amended Complaint. *See* Am. Compl., ECF No. 39.[1] On February 20, 2013, Poteat was pulled over by Defendant Gerald Lydon. *See id.* ¶ 7. During the traffic stop, Lydon alleges that he smelled marijuana coming from Poteat's vehicle. *See id.* Thereafter, two officers arrived with a K-9, and they asked Poteat to step out of his vehicle. *See id.* Poteat alleges that Lydon issued Poteat a warning for the traffic violation and informed Poteat that he was free to leave. *See id.* Thereafter, Poteat alleges that Lydon then asked Poteat if anything illegal was in the vehicle. *See id.* Poteat denied having anything illegal in the car and did not consent to a search. *See id.* Poteat continued to refuse a search of the vehicle, so the officers walked the K-9 around the vehicle. *See id.* Lydon told Poteat that the K-9 alerted on the vehicle, and Lydon indicated that he would be applying for a search warrant for Poteat's vehicle. *See id.* Poteat agreed to go to the Pennsylvania State Police barracks where his vehicle would be towed. *See id.* While in the back of the police car, Poteat alleges that he saw one of the officers enter his vehicle and move items from the armrest to the passenger seat. *See id.*

Once at the barracks, Lydon applied for a search warrant that was approved by a magistrate judge. *See id.* ¶ 8. That evening, Lydon and other officers searched the vehicle and seized two plastic bags of suspected cocaine and two bags of suspected marijuana, among other items. *See id.* As a result, on February 26, 2013, Lydon filed charges against Poteat. *See id.* While processing Poteat, Lydon included the extradition code "SSO" or "Surrounding States Only," despite knowing Poteat's address. *See id.* Pursuant to an arrest warrant, Poteat was

---

[1] It appears that Poteat's "Statement of Fact" in his Amended Complaint was copied, verbatim, from this Court's Opinion dismissing his initial Complaint. *Compare* Am. Compl. ¶¶ 7-13, *with* Op. 1/7/22 at 2-4, ECF No. 29.

II. BACKGROUND

The background is taken, in large part, from allegations in Poteat's Amended Complaint. *See* Am. Compl., ECF No. 39.[1] On February 20, 2013, Poteat was pulled over by Defendant Gerald Lydon. *See id.* ¶ 7. During the traffic stop, Lydon alleges that he smelled marijuana coming from Poteat's vehicle. *See id.* Thereafter, two officers arrived with a K-9, and they asked Poteat to step out of his vehicle. *See id.* Poteat alleges that Lydon issued Poteat a warning for the traffic violation and informed Poteat that he was free to leave. *See id.* Thereafter, Poteat alleges that Lydon then asked Poteat if anything illegal was in the vehicle. *See id.* Poteat denied having anything illegal in the car and did not consent to a search. *See id.* Poteat continued to refuse a search of the vehicle, so the officers walked the K-9 around the vehicle. *See id.* Lydon told Poteat that the K-9 alerted on the vehicle, and Lydon indicated that he would be applying for a search warrant for Poteat's vehicle. *See id.* Poteat agreed to go to the Pennsylvania State Police barracks where his vehicle would be towed. *See id.* While in the back of the police car, Poteat alleges that he saw one of the officers enter his vehicle and move items from the armrest to the passenger seat. *See id.*

Once at the barracks, Lydon applied for a search warrant that was approved by a magistrate judge. *See id.* ¶ 8. That evening, Lydon and other officers searched the vehicle and seized two plastic bags of suspected cocaine and two bags of suspected marijuana, among other items. *See id.* As a result, on February 26, 2013, Lydon filed charges against Poteat. *See id.* While processing Poteat, Lydon included the extradition code "SSO" or "Surrounding States Only," despite knowing Poteat's address. *See id.* Pursuant to an arrest warrant, Poteat was

[1] It appears that Poteat's "Statement of Fact" in his Amended Complaint was copied, verbatim, from this Court's Opinion dismissing his initial Complaint. *Compare* Am. Compl. ¶¶ 7-13, *with* Op. 1/7/22 at 2-4, ECF No. 29.

arrested on May 27, 2014 in Maryland. *See id.* Poteat was taken into custody at the Harford County Detention Center and served extradition papers for charges in Virginia. *See id.* However, Poteat alleges that no detainer nor extradition proceedings were brought by Pennsylvania authorities to bring Poteat to Pennsylvania. *See id.*

On May 29, 2014, Poteat was extradited to Virginia. *See id.* ¶ 9. While the facts that follow are unclear, it appears from the Amended Complaint that there was disagreement over whether Poteat would be extradited to Pennsylvania for the charges stemming from February 2013. *See id.* Eventually, on July 16, 2014, Poteat was extradited to Pennsylvania. *See id.*

On August 5, 2015, relating to Poteat's Pennsylvania charges, Poteat alleges that Lydon again applied for a search warrant, but Poteat does not indicate what that warrant related to. *See id.* ¶ 10. On September 21, 2015, Poteat was convicted on all counts in a non-jury trial. *See id.* On October 10, 2015, Poteat was sentenced to 5-10 years' incarceration. *See id.* The Pennsylvania Superior Court affirmed his conviction, and Poteat's petitions for Pennsylvania Supreme Court review and United States Supreme Court review were both denied. *See id.*

On September 21, 2018, Poteat filed a PCRA petition. *See id.* ¶ 11. On July 8, 2019,[2] the PCRA court determined that the Commonwealth had violated Rule 600 of the Pennsylvania Rules of Criminal Procedure, and accordingly, the PCRA court vacated Poteat's sentence. *See id.* On July 9, 2019, Poteat was released from prison. *See id.*

On July 12, 2021, Poteat filed his initial instant Complaint before this Court, asserting five counts against more than a dozen Defendants. Poteat asserted various constitutional and tort claims related to the search of his vehicle, his arrest, his extradition, and his prosecution. Upon

---

[2] The order vacating Poteat's sentence, which Defendants attached to their prior motion to dismiss, is dated July 2, 2019. *See* ECF No. 24-2 at Ex. B. However, it is possible that Poteat did not receive notice of this Order until July 8, 2019.

motions by the named Defendants, this Court dismissed Plaintiff's initial Complaint on January 7, 2022.[3] *See* Op. 1/7/22; Order 1/7/22, ECF No. 30.

On March 8, 2022, Poteat filed an Amended Complaint. *See* Am. Compl. Therein, he alleges the following claims for relief:

Count I: Malicious Prosecution;

Count II: Intentional Infliction of Emotional Distress;

Count III: Due Process Violations;

Count IV: Abuse of Process;

Count V: Deprivation of Due Process – Property;

Count VI: Deprivation of Due Process – Fabrication of Evidence;

Count VII: Conspiracy to Violate Civil Rights;

Count VIII: Supervisory Liability; Failure to Intervene;

Count IX: Equal Protection Violation; and

Count X: Wrongful Extradition.

On March 21, 2022, a group of named Defendants consisting of Heather Gallaguer, Jared Hanna, James Martin, Edward Ressler, Joseph Stauffer, and Bethany Zampogna moved to dismiss Poteat's Amended Complaint. *See* DA Mot., ECF No. 40.[4] On March 22, 2022, another group of named Defendants consisting of Gregory Emory, Nicholas Goldsmith, Justin Julius, Brian Konopka, Chad Labour, and Lydon moved to dismiss Poteat's Amended Complaint. *See*

---

[3] As a result of this Opinion and Order, Count I and Poteat's false imprisonment claim in Count IV were dismissed with prejudice as against all Defendants. The remaining claims were dismissed without prejudice and with leave to amend.

[4] Each of the Defendants who have signed onto this motion hold some position with the Lehigh County District Attorney's Office. Accordingly, for ease of future reference, this motion is referred to as "DA Mot." throughout this Opinion.

PSP Mot., ECF No. 41.[5] On April 6, 2022, Poteat filed responses to both pending motions. *See* Resp. DA, ECF No. 42; Resp PSP, ECF No. 43. The time for the filing of a reply has well expired as of the date of this Opinion. Accordingly, the motions are ready for review.

III. LEGAL STANDARDS

A. Motion to Dismiss – Review of Applicable Law

In rendering a decision on a motion to dismiss, this Court must "accept all factual allegations as true [and] construe the complaint in the light most favorable to the plaintiff." *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008) (quoting *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)) (cleaned up). Only if "the '[f]actual allegations . . . raise a right to relief above the speculative level'" has the plaintiff stated a plausible claim. *Id.* at 234 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id.* (explaining that determining "whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense"). "In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." *See Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010). The defendant bears the burden of demonstrating that a plaintiff has failed to

[5] Each of the Defendants who have signed onto this motion hold some position with the Pennsylvania State Police. Accordingly, for ease of future reference, this motion is referred to as "PSP Mot." throughout this Opinion.

state a claim upon which relief can be granted. *See Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005) (citing *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991)).

B. Statute of Limitations for § 1983 Claims – Review of Applicable Law

"Claims brought under § 1983 are subject to the state statutes of limitations governing personal injury actions." *Moore v. Giorla*, 302 F. Supp. 3d 700, 706 (E.D. Pa. 2018) (citing *Garvin v. City of Philadelphia*, 354 F.3d 215, 220 (3d Cir. 2003)). The Pennsylvania statute of limitations for personal injury actions, which is applicable in the instant case, is two years. *See id.*

C. Malicious Prosecution – Review of Applicable Law

To state a claim for malicious prosecution, a plaintiff must show:

(1) "the defendants initiated a criminal proceeding;"

(2) the proceeding "ended in plaintiff's favor;"

(3) "the proceeding was initiated without probable cause;"

(4) "the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice;" and

(5) "the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding."

Malcomb v. McKean, 535 F. App'x 184, 186 (3d Cir. 2013) (quoting *Kossler v. Crisanti*, 564 F.3d 181, 186 (3d Cir. 2009)).

D. Intentional Infliction of Emotional Distress – Review of Applicable Law

"An action for [IIED] requires a plaintiff to show that (1) the conduct is extreme; (2) the conduct is intentional or reckless; (3) the conduct caused emotional distress; and (4) the distress is severe." *Kornegey v. City of Philadelphia*, 299 F. Supp. 3d 675, 683 (E.D. Pa. 2018) (citing,

inter alia, Arnold v. City of Philadelphia, 151 F. Supp. 3d 568, 579 (E.D. Pa. 2015)). "To state a claim for IIED in Pennsylvania, a plaintiff must demonstrate that the defendant's conduct was 'so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized society.'" *Id.* (quoting *McGreevy v. Stroup*, 413 F.3d 359, 371 (3d Cir. 2005)).

E. 14th Amendment Due Process Claim – Review of Applicable Law

"To state a claim under § 1983 for deprivation of procedural due process rights, a plaintiff must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of 'life, liberty, or property,' and (2) the procedures available to him did not provide 'due process of law.'" *Hill v. Borough of Kutztown*, 455 F.3d 225, 233–34 (3d Cir. 2006) (citing *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000)).

F. Abuse of Process – Review of Applicable Law

"The common law tort of abuse of process is defined as the perversion of legal process after it has begun 'primarily to accomplish a purpose for which it is not designed.'" *Ciolli*, 625 F. Supp. 2d at 296 (quoting *Werner v. Plater–Zyberk*, 799 A.2d 776, 785 (Pa. Super. Ct. 2002)). "To state a claim for abuse of process, a plaintiff must allege facts sufficient to show that 'the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed, and (3) harm has been caused to the plaintiff.'" *EMC Outdoor, LLC v. Stuart*, Civ. A. No. 17-5712, 2018 WL 3208155, at *3 (E.D. Pa. June 28, 2018) (quoting *Naythons v. Stradley, Ronon, Stevens & Young, LLP*, No. 07-4489 (RMB), 2008 WL 1914750, at *3 (E.D. Pa. Apr. 30, 2008)).

The tort is designed to prevent the "use of legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process." *See id.* (quoting *Al Hamilton*

Contracting Co. v. Cowder, 644 A.2d 188, 191 (Pa. Super. Ct. 1994)). A defendant's "bad or malicious intentions" are not enough; "[r]ather there must be an act or threat not authorized by the process, or the process must be used for an illegitimate aim such as extortion, blackmail, or to coerce or compel the plaintiff to take some collateral action." *See id.* (quoting *Al Hamilton Contracting*, 644 A.2d at 192).

G. Conspiracy under § 1983 – Review of Applicable Law

To make out a conspiracy to violate one's civil rights under § 1983, a plaintiff must show "(1) the existence of a conspiracy involving state action; and (2) a deprivation of civil rights in furtherance of the conspiracy by a party to the conspiracy." *See Rosembert v. Borough of East Lansdowne*, 14 F. Supp. 3d 631, 647 (E.D. Pa. 2014) (quoting *Gale v. Storti*, 608 F. Supp. 2d 629, 635 (E.D. Pa. 2009)). "A plaintiff must allege that there was an agreement or meeting of the minds to violate his constitutional rights." *Id.*

IV. ANALYSIS

In his Amended Complaint, Poteat asserts ten claims for relief. This Court reviews the claims in the order in which they are presented in the Amended Complaint. After a review of the briefing and Poteat's allegations, and for the reasons set forth more thoroughly below, this Court grants Defendants' motions to dismiss with respect to all Counts. Thus, Poteat's Amended Complaint is dismissed. The dismissal of Poteat's Amended Complaint is with prejudice. As to those claims that Poteat pleaded in his initial Complaint, Poteat was given an opportunity to amend. *See Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004) (holding that "even when a plaintiff does not seek leave to amend, if a complaint is vulnerable to 12(b)(6) dismissal, a District Court must permit a curative amendment, unless an amendment would be inequitable or futile"). Despite notice of various deficiencies in his Complaint, Poteat failed to plead any new

facts in his Amended Complaint that would cure the deficiencies outlined by this Court with respect to those claims. *See Krantz v. Prudential Invs. Fund Mgmt. LLC*, 305 F.3d 140, 144-45 (3d Cir. 2002) ("A District Court has discretion to deny a plaintiff leave to amend where the plaintiff was put on notice as to the deficiencies in his complaint, but chose not to resolve them."). To permit further amendment of these claims would be to work an inequity against the Defendants.

Moreover, with respect to those claims that Poteat asserts for the first time in his Amended Complaint, this Court concludes that they are barred by the statute of limitations. The novel claims largely relate to events transpiring between 2013 and 2015. Accordingly, they fall well outside of the applicable limitations period. For those reasons, Poteat's Amended Complaint is dismissed in its entirety with prejudice.

A. Malicious Prosecution (Count I)

In Count I, Poteat asserts a claim for malicious prosecution. In order to state a claim for malicious prosecution, among other elements, a plaintiff must show that the underlying proceedings terminated in his favor. *Malcomb*, 535 F. App'x at 186 (3d Cir. 2013) (quoting *Kossler*, 564 F.3d at 186). The Third Circuit has held that "a prior criminal case must have been disposed of in a way that indicates the innocence of the accused in order to satisfy the favorable termination element." *See Kossler*, 564 F.3d at 186 (citing *Donahue v. Gavin*, 280 F.3d 371, 383 (3d Cir. 2002)). Significantly, "the eventual dismissal of [a] federal prosecution due to a violation of the Speedy Trial Act does not constitute a favorable termination in that the dismissal . . . does not reflect the merits of the underlying criminal charges, only a violation of statutory procedural requirements." *See Noble v. City of Erie*, 1:18-cv-06, 2021 WL 3609987, at *5 (W.D. Pa. July 15, 2021) (citing *Cordova v. City of Albuquerque*, 816 F.3d 645, 652 (10th Cir. 2016)).

As this Court noted in its prior Opinion, Poteat's proceedings terminated via an order from the PCRA court vacating his sentence. In that order, the presiding judge indicated that the basis for vacating the sentence was the Commonwealth's violation of Rule 600 of the Pennsylvania Rules of Criminal Procedure. *See* ECF No. 24-2. Rule 600 governs a defendant's right to a speedy trial in Pennsylvania. Accordingly, Poteat's criminal prosecution was terminated on the basis of a speedy trial violation. Like *Noble*, this termination does not indicate Poteat's innocence; rather, it represents a dismissal based on a procedural violation. *See id.* at *5.

In his Amended Complaint, Poteat alleges no new facts to suggest that the underlying proceedings terminated in a manner that indicated his innocence. In fact, Poteat acknowledges that the underlying criminal proceedings terminated pursuant to Rule 600. *See* Am. Compl. ¶ 35. Instead, Poteat argues that "[w]hile the charges were eventually terminated pursuant to rule 600 – Speedy Trial, this does not preclude the Plaintiff's claim that there was a lack of probable cause for the claims in the instant matter . . . ." *See id.* Notwithstanding, as this Court explained to Poteat in its prior Opinion, a lack of probable cause is only one element of a claim for malicious prosecution. A plaintiff must also show that the underlying proceeding terminated in a manner that indicates his or her innocence. *Malcomb*, 535 F. App'x at 186 (3d Cir. 2013) (quoting *Kossler*, 564 F.3d at 186). Despite the opportunity to amend, Poteat has failed to allege this critical element. Accordingly, Poteat's claim for malicious prosecution in Count I of the Amended Complaint is dismissed. This dismissal is one with prejudice for the reasons discussed above.

B. Intentional Infliction of Emotional Distress (Count II)

In order to state a claim for IIED, Poteat must allege (1) extreme conduct, (2) that is intentional or reckless, and (3) that causes severe emotional distress. *See Kornegey*, 299 F. Supp. 3d at 683 (citing, *inter alia*, *Arnold*, 151 F. Supp. 3d at 579). In his Amended Complaint, Poteat includes four actions that he alleges were "extreme and intentional" conduct: (1) the Defendants' stopping him without a valid basis; (2) the Defendants' use of the K-9 unit without a valid basis, (3) the Defendants' insistence on a search after telling Poteat he was free to leave, and (4) the Defendants' prosecution of Poteat despite expiry of the speedy trial clock. Of these four actions, three of them fall well outside of the statute of limitations. As this Court noted in previously dismissing Poteat's Fourth Amendment claim, the stop, use of a K-9, and search that Poteat refers to all occurred in 2013. The two-year statute of limitations in Pennsylvania for filing of an IIED claim had well expired by the time Poteat filed the instant matter. Accordingly, Poteat's IIED claim cannot be based upon those three actions that are related to the 2013 search.

With respect to the continued prosecution of Poteat, this Court is unpersuaded that such represented an extreme or outrageous action sufficient to sustain a cause of action for IIED. However, even assuming that Poteat had set forth some extreme or outrageous conduct, he has failed to plausibly allege the remaining elements of a claim. In particular, at no juncture does Poteat allege that *he himself* experienced any severe emotional distress or alleged any symptoms that resulted therefrom. Rather, in the relevant allegation, Poteat merely states that his prosecution was "extreme and intentional and reckless enough to cause extreme emotional distress." *See* Compl. ¶ 40(8). Poteat wholly fails to connect his prosecution to any mental distress that he experienced, alleging only that events such as his prosecution could cause emotional distress in theory. *See id.* Accordingly, even if Poteat had alleged an extreme action,

he otherwise fails to state a claim for IIED. For that reason, Poteat's IIED claim is dismissed. This dismissal is one with prejudice for the reasons discussed above.

C. Due Process Violation (Count III)

Next, Poteat asserts a claim for violation of due process. In his Amended Complaint, Poteat admits that he was provided an opportunity to be heard regarding the alleged speedy trial violation and that the issue was ultimately decided in his favor in the PCRA court. *See* Am. Compl. ¶¶ 45-46. Instead, Poteat seeks compensation "for the amount of time [he was] wrongfully incarcerated as a result of the violation." *See id.* ¶ 46.

"In procedural due process claims, . . . "[t]he constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete *unless and until the State fails to provide due process.*" *Zinermon v. Burch*, 494 U.S. 113, 126 (1990) (emphasis added). Here, because Poteat all but admits that the state provided him process and a remedy for the speedy trial violation, a due process claim does not lie. Put another way, Poteat's claim for compensation for the time during which he was incarcerated is not actionable under the Due Process Clause. Accordingly, Poteat's claim of a due process violation in Count III is dismissed. This dismissal is one with prejudice for the reasons discussed above.

D. Abuse of Process (Count IV)

In order to state a claim for abuse of process, Poteat must allege that Defendants used a legal process against him, to accomplish an improper purpose, that resulted in harm to Poteat. *See EMC Outdoor, LLC*, 2018 WL 3208155, at *3. In his Amended Complaint, Poteat alleges four abuses to support the claim. At the outset, three of the alleged abuses fall well outside of the statute of limitations. These alleged abuses related to (1) the issuance of the search warrant in 2013, (2) the execution of that warrant in the same year, and (3) the extradition of Poteat to

Virginia in July of 2014. To the extent Poteat wishes to base this claim on events occurring in 2013 and 2014 respectively, the two-year limitations period in Pennsylvania for claims involving abuse of process well-expired prior to Poteat's initiation of this lawsuit. Accordingly, Poteat's abuse of process claim may not be founded on those three allegations.

Remaining is Poteat's allegations that the abuse of process involved the Defendants' continued prosecution of him despite the speedy trial violation. Notwithstanding, this allegation does not suffice to state a claim for abuse of process. As the Third Circuit recognized, liability for an abuse of process claim does not lie "where the [prosecutor] has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." *See Napier v. City of Newcastle*, 407 F. App'x 578, 582 (3d Cir. 2010) (citing *Napier v. City of New Castle*, Civ. A. No. 06-1368, 2007 WL 1965296, at *6 (W.D. Pa. July 3, 2007)). Here, despite Poteat's claims that prosecutors knew that the speedy trial clock had expired, the prosecutor Defendants did nothing more than carry out a legitimately-initiated process against Poteat. Accordingly, this action alone does not suffice to show that Defendants engaged in an abuse of process.

Therefore, Poteat's abuse of process claim is dismissed. This dismissal is one with prejudice.

E. Deprivation of Due Process – Property (Count V)

Poteat next claims that certain property taken during the search of his vehicle was never returned to him. This claim was not contained in Poteat's original Complaint. According to Poteat's own allegations, searches were executed as part of his criminal prosecution in both 2013 and 2015. As this Court has already noted, any claims related to these searches are barred by the statute of limitations. Therefore, Poteat's claim in Count V is dismissed with prejudice as untimely.

F. Deprivation of Due Process – Fabrication of Evidence (Count VI)

Poteat next claims that the Defendants fabricated evidence to assist in the procurement of search warrants. As with Count V, this claim was not contained in Poteat's original Complaint. The alleged searches in Poteat's criminal matter occurred in 2013 and 2015. Accordingly, both fall well outside of the two-year statute of limitations. Therefore, Poteat's claim in Count VI is dismissed with prejudice as untimely.

G. Conspiracy to Interfere with Civil Rights (Count VII)

Next, Poteat asserts that the Defendants conspired to interfere with his civil rights. Notwithstanding, this claim fails for two reasons. First, as was the case with his original Complaint, Poteat has again failed to state a claim with respect to any of his other claims. Accordingly, there is no surviving underlying claim upon which to ground a claim of conspiracy. Second, even if one of his underlying claims had survived, Poteat does not allege any new facts in his Amended Complaint that would indicate that the Defendants conspired with one another to achieve a joint purpose. Importantly, Poteat does not allege any meeting of the minds or agreement between the several named Defendants to violate Poteat's rights. Instead, Poteat merely claims that a "reasonable jury" could determine that such a meeting of the minds occurred. Allegations of this sort are conclusory and do not carry Poteat's burden on a motion to dismiss. Accordingly, Count IV is dismissed. This dismissal is one with prejudice for the reasons discussed above.

H. Supervisory Liability; Failure to Intervene (Count VIII)

In Count VIII of his Amended Complaint, Poteat alleges two novel claims against only the PSP Supervisor Defendants. Therein, Poteat asserts that the supervisors exhibited a deliberate indifference to his rights when they failed to supervise or intervene in unlawful actions

taken by PSP subordinates. In his allegations, Poteat lists several junctures at which he believed it was the duty of these particular Defendants to supervise or otherwise intervene in conduct. Notwithstanding, some of the events listed are too vague to undergo an appropriate analysis, and moreover, all of these events fall outside of the statute of limitations.

In particular, Poteat's trial concluded with his conviction on September 21, 2015. Accordingly, as of that point in time, the actions over which the PSP Supervisor Defendants had any sort of control had already taken place. Thus, any action (or inaction) that would bear on Poteat's claims in Count VIII necessarily took place before September 21, 2015. Put another way, by the conclusion of his criminal prosecution, Poteat would have had a complete and present cause of action with respect to any failure to intervene or supervise on the part of the PSP Supervisors. Poteat's present action was filed well beyond the two-year limitations period for bringing claims that accrued, at the latest, in September of 2015. Therefore, Poteat's claims in Count VIII are dismissed as barred by the statute of limitations.

I. Equal Protection Violation (Count IX)

In Count IX, Poteat asserts an equal protection violation. In particular, Poteat claims that he was racially profiled at the time he was searched. As noted above, Poteat alleges only searches that occurred in 2013 and 2015. Accordingly, both searches are well outside of the two-year limitations period for § 1983 claims, and for that reason, they cannot support an equal protection claim. Thus, Poteat's claim in Count IX is dismissed with prejudice as barred by the statute of limitations.

J. Wrongful Extradition (Count X)

In Count X, Poteat asserts a claim for wrongful extradition. Poteat was extradited on July 16, 2014. The instant case, initiated on July 12, 2021, comes nearly seven years after the date of

his extradition. Accordingly, this claim falls well outside of the two-year statute of limitations for § 1983 claims, and therefore, it is dismissed with prejudice as barred by the statute of limitations.

K. Claims against the Pennsylvania State Police and Lehigh County District Attorney's Office

Finally, Poteat names both the Pennsylvania State Police and Lehigh County District Attorney's Office as Defendants to this case. While neither of these two parties joined in the present motions to dismiss, this Court may nonetheless dismiss them *sua sponte* where there are no facts that Poteat could plead against these two Defendants that would entitle him to relief. *See Sullivan Assocs., Inc. v. Dellots, Inc.*, Civ. A. No. 97-5457, 1997 WL 778976, at *1, *8 (E.D. Pa. Dec. 17, 1997) (citing *Conley v. Gibson*, 355 U.S. 41, 45 (1957)).

In this instance, the Court finds that it is appropriate to dismiss the Pennsylvania State Police and Lehigh County District Attorney's Office for two reasons. First, neither the Pennsylvania State Police nor the Lehigh County District Attorney's Office constitute "persons" within the meaning of § 1983. *See Rode v. Dellarciprete*, 617 F. Supp. 721, 723 (E.D. Pa. 1985) (holding that the Pennsylvania State Police is not a "person[]" within the meaning of § 1983); *Shareef v. Moore*, Civ. A. No. 18-1494, 2020 WL 1445878, at *6 (W.D. Pa. Mar. 25, 2020) ("[A] district attorney's office is not a 'person' that can be sued within the meaning of § 1983." (citing *Reitz v. County of Bucks*, 125 F.3d 139, 148 (3d Cir. 1997))). Accordingly, they may not be sued under that statute. Second, whereas this Court has dismissed all of the claims against the individual Defendants, who are employees of these two offices, there necessarily are no facts that Poteat could plead against the offices themselves that would entitle him to relief.

Therefore, both the Pennsylvania State Police and Lehigh County District Attorney's Office are dismissed with prejudice.

V. CONCLUSION

With respect to those claims that Poteat amended in his Amended Complaint, he has again failed to state a claim. Poteat was on notice of the factual deficiencies of these claims, yet he did not remedy them. Accordingly, those claims are dismissed with prejudice, as to permit further amendment would work an inequity against Defendants.

Moreover, Poteat's novel claims are entirely based on conduct that falls outside of the applicable limitations period. Accordingly, those claims are dismissed with prejudice as barred by the statute of limitations. This results in the dismissal of Poteat's Amended Complaint, in its entirety, with prejudice.

A separate Order follows.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-2114

ANTOINE POTEAT,
Appellant

v.

GERALD LYDON, Individually and Official Capacity of Pennsylvania State Police; CHAD LABOUR, Individually and Official Capacity of Pennsylvania State Police; NICHOLAS GOLDSMITH, Individually and Official Capacity of Pennsylvania State Police; JUSTIN JULIUS, Individually and Official Capacity of Pennsylvania State Police; GREGORY EMERY, Individually and Official Capacity of Pennsylvania State Police; BRIAN KONOPKA, Individually and Official Capacity of Pennsylvania State Police; HEATHER GALLAGUER, Individually and Official Capacity of Lehigh County District Attorney's Office; BETHANY ZAMPOGNA, Individual and Official Capacity of Lehigh County District Attorney's Office; JOSEPH STAUFFER, Individually and Official Capacity of Lehigh County District Attorney's Office; JAMES MARTIN, Individually and Official Capacity of Lehigh County District Attorney's Office; JARED HANNA, Individually and Official Capacity of Lehigh County District Attorney's Office; EDWARD RESSLER, Individually and Official Capacity of Lehigh County District Attorney's Office

---

(EDPA D.C. Civ. No. 5:21-cv-03117)

SUR PETITION FOR PANEL REHEARING

Present: JORDAN, CHUNG, and NYGAARD, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby O R D E R E D that the petition for rehearing by the panel is denied.

BY THE COURT,

s/ Richard L. Nygaard
Circuit Judge

Dated: November 8, 2023
PDB/cc: All Counsel of Record

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANTOINE POTEAT, Plaintiff,	:	
v.	:	No. 5:21-cv-03117
GERALD LYDON, *et al.*, Defendants.	:	

OPINION

Plaintiff's Motion for Reconsideration, ECF Nos. 46 and 49 – Granted in part, denied in part

Joseph F. Leeson, Jr.
United States District Judge

August 9, 2022

I. INTRODUCTION

This matter involves claims arising under 42 U.S.C. § 1983 brought by pro se Plaintiff Antoine Poteat against more than a dozen Defendants, many of whom are employed by either the Pennsylvania State Police or the Lehigh County District Attorney's Office.

Following dismissal of his Amended Complaint with prejudice, Poteat filed the present motion for reconsideration. After a review of the motion, this Court grants reconsideration on Poteat's malicious prosecution claim, but denies reconsideration of his remaining claims. Upon reconsideration of Poteat's malicious prosecution claim, the Court determines that the claim was appropriately dismissed with prejudice.

II. BACKGROUND

The background is taken, in large part, from allegations in Poteat's Amended Complaint. *See* Am. Compl., ECF No. 39. On February 20, 2013, Poteat was pulled over by Defendant Gerald Lydon. *See id.* ¶ 7. During the traffic stop, Lydon alleges that he smelled marijuana

coming from Poteat's vehicle. *See id.* Thereafter, two officers arrived with a K-9, and they asked Poteat to step out of his vehicle. *See id.* Poteat alleges that Lydon issued Poteat a warning for the traffic violation and informed Poteat that he was free to leave. *See id.* Thereafter, Poteat alleges that Lydon then asked Poteat if anything illegal was in the vehicle. *See id.* Poteat denied having anything illegal in the car and did not consent to a search. *See id.* Poteat continued to refuse a search of the vehicle, so the officers walked the K-9 around the vehicle. *See id.* Lydon told Poteat that the K-9 alerted on the vehicle, and Lydon indicated that he would be applying for a search warrant for Poteat's vehicle. *See id.* Poteat agreed to go to the Pennsylvania State Police barracks where his vehicle would be towed. *See id.* While in the back of the police car, Poteat alleges that he saw one of the officers enter his vehicle and move items from the armrest to the passenger seat. *See id.*

Once at the barracks, Lydon applied for a search warrant that was approved by a magistrate judge. *See id.* ¶ 8. That evening, Lydon and other officers searched the vehicle and seized two plastic bags of suspected cocaine and two bags of suspected marijuana, among other items. *See id.* As a result, on February 26, 2013, Lydon filed charges against Poteat. *See id.* While processing Poteat, Lydon included the extradition code "SSO" or "Surrounding States Only," despite knowing Poteat's address. *See id.* Pursuant to an arrest warrant, Poteat was arrested on May 27, 2014 in Maryland. *See id.* Poteat was taken into custody at the Harford County Detention Center and served extradition papers for charges in Virginia. *See id.* However, Poteat alleges that no detainer nor extradition proceedings were brought by Pennsylvania authorities to bring Poteat to Pennsylvania. *See id.*

On May 29, 2014, Poteat was extradited to Virginia. *See id.* ¶ 9. While the facts that follow are unclear, it appears from the Amended Complaint that there was disagreement over

whether Poteat would be extradited to Pennsylvania for the charges stemming from February 2013. *See id.* Eventually, on July 16, 2014, Poteat was extradited to Pennsylvania. *See id.*

On August 5, 2015, relating to Poteat's Pennsylvania charges, Poteat alleges that Lydon again applied for a search warrant, but Poteat does not indicate what that warrant related to. *See id.* ¶ 10. On September 21, 2015, Poteat was convicted on all counts in a non-jury trial. *See id.* On October 10, 2015, Poteat was sentenced to 5-10 years' incarceration. *See id.* The Pennsylvania Superior Court affirmed his conviction, and Poteat's petitions for Pennsylvania Supreme Court review and United States Supreme Court review were both denied. *See id.*

On September 21, 2018, Poteat filed a PCRA petition. *See id.* ¶ 11. On July 8, 2019,[1] the PCRA court determined that the Commonwealth had violated Rule 600 of the Pennsylvania Rules of Criminal Procedure, and accordingly, the PCRA court vacated Poteat's sentence. *See id.* On July 9, 2019, Poteat was released from prison. *See id.*

On July 12, 2021, Poteat filed his first Complaint before this Court, asserting five counts against more than a dozen Defendants. Poteat asserted various constitutional and tort claims related to the search of his vehicle, his arrest, his extradition, and his prosecution. Upon motions by the named Defendants, this Court dismissed Plaintiff's initial Complaint on January 7, 2022.[2] *See* Op. 1/7/22; Order 1/7/22, ECF No. 30.

On March 8, 2022, Poteat filed an Amended Complaint, alleging similar constitutional and tort claims. *See* Am. Compl. On motions from Defendants, the Court dismissed the

---

[1] The order vacating Poteat's sentence, which Defendants attached to their prior motion to dismiss, is dated July 2, 2019. *See* ECF No. 24-2 at Ex. B. However, it is possible that Poteat did not receive notice of this Order until July 8, 2019.

[2] As a result of this Opinion and Order, Count I and Poteat's false imprisonment claim in Count IV were dismissed with prejudice as against all Defendants. The remaining claims were dismissed without prejudice and with leave to amend.

Amended Complaint with prejudice. *See* Op. 5/20/22, ECF No. 44; Order 5/20/22, ECF No. 45. On June 13, 2022, Poteat filed the present motion for reconsideration of this Court's Order and Opinion of May 20, 2022. *See* Mot., ECF Nos. 46 and 49.

III. LEGAL STANDARDS

A. Motion for Reconsideration – Review of Applicable Law

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). "Accordingly, a judgment may be altered or amended if the party seeking reconsideration shows at least one of the following grounds:"

"(1) an intervening change in the controlling law;"

"(2) the availability of new evidence that was not available when the court granted the motion . . . ;" or

"(3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Cafe by Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). "It is improper on a motion for reconsideration to ask the Court to rethink what [it] had already thought through--rightly or wrongly." *Glendon Energy Co. v. Borough of Glendon*, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993) (internal quotations omitted). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." *Cont'l Cas. Co. v. Diversified Indus.*, 884 F. Supp. 937, 943 (E.D. Pa. 1995).

B. Statute of Limitations for § 1983 Claims – Review of Applicable Law

"Claims brought under § 1983 are subject to the state statutes of limitations governing personal injury actions." *Moore v. Giorla*, 302 F. Supp. 3d 700, 706 (E.D. Pa. 2018) (citing *Garvin v. City of Philadelphia*, 354 F.3d 215, 220 (3d Cir. 2003)). The Pennsylvania statute of

limitations for personal injury actions, which is applicable in the instant case, is two years. *See id.*

C. Malicious Prosecution – Review of Applicable Law

To state a claim for malicious prosecution, a plaintiff must show:

(1) "the defendants initiated a criminal proceeding;"

(2) the proceeding "ended in plaintiff's favor;"

(3) "the proceeding was initiated without probable cause;"

(4) "the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice;" and

(5) "the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding."

Malcomb v. McKean, 535 F. App'x 184, 186 (3d Cir. 2013) (quoting *Kossler v. Crisanti*, 564 F.3d 181, 186 (3d Cir. 2009)).

D. Conspiracy under § 1983 – Review of Applicable Law

To make out a conspiracy to violate one's civil rights under § 1983, a plaintiff must show "(1) the existence of a conspiracy involving state action; and (2) a deprivation of civil rights in furtherance of the conspiracy by a party to the conspiracy." *See Rosembert v. Borough of East Lansdowne*, 14 F. Supp. 3d 631, 647 (E.D. Pa. 2014) (quoting *Gale v. Storti*, 608 F. Supp. 2d 629, 635 (E.D. Pa. 2009)). "A plaintiff must allege that there was an agreement or meeting of the minds to violate his constitutional rights." *Id.*

IV. ANALYSIS

In his motion, Poteat indicates that he seeks reconsideration based on the Court's legal error. His claims of error can be separated into three categories. First, Poteat claims that this

Court erred in finding certain claims of his were barred by the applicable statute of limitations. Second, Poteat asserts that this Court erred in its review of the substance of his due process and conspiracy claims. Finally, Poteat asserts that this court erred in finding that he failed to establish the "favorable termination" element of a malicious prosecution claim.

With respect to Poteat's time-barred claims, the Court concludes that reconsideration is not warranted. With respect to Poteat's merits-based claims of error, the Court similarly concludes that reconsideration is not warranted. With respect to Poteat's malicious prosecution claim, the Court finds legal error in its own assessment of the favorable termination element. Accordingly, the Court grants reconsideration of that claim. However, on reconsideration, Poteat's malicious prosecution claim fails on other elements. Accordingly, the malicious prosecution claim is dismissed with prejudice.

A. Statute of Limitations Claims

Poteat makes three arguments related to his time-barred claims. First, he asserts that this Court failed to consider his incarceration as a basis for tolling the limitations period. Second, he argues the Court failed to apply equitable tolling to his claims. Third, he asserts that the Court failed to apply the continuing violations doctrine to his abuse of process claim. Following a review of these arguments, the Court concludes that no error occurred in its review of Poteat's time-barred claims, and accordingly, Poteat's motion for reconsideration of these claims is denied.

1. Incarceration-Based Tolling of Limitations Period

First, Poteat claims that this Court failed to consider the fact that he was incarcerated and unable to initiate the instant case for that reason. Unfortunately, Poteat misunderstands the very precedent he cites in support of this argument.

As Poteat points out in his motion, under Pennsylvania law, "it is clear that incarceration will not toll the statute of limitations." *See* Mot. ¶ 9 (citing 42 Pa. Cons. Stat. § 5533(a) ("[I]mprisonment does not extend the time limited by this subchapter for the commencement of a matter."); *Sandutch v. Muroski*, 684 F.2d 252, 254 (3d Cir. 1982) (same)). The Legal Information Institute defines the term "Toll" to mean, "[t]o *stop* the running of a time period, especially a time period set by a statute of limitations." *Toll*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/toll (last visited Aug. 5, 2022) (emphasis added). Accordingly, Pennsylvania law does not permit a stoppage of the limitations period simply because the individual seeking to bring suit is incarcerated. *See* § 5533(a). Put another way, the two-year clock for Poteat to file suit continued to run despite the fact that he was imprisoned. *See id.*

Based on a misreading of the case law Poteat cites, he believes that his incarceration warrants tolling, or a stoppage, of the limitations period. However, under Pennsylvania law, that is clearly impermissible. Accordingly, to the extent Poteat seeks reconsideration of his time-barred claims on the basis of any incarceration-based tolling, the motion is denied.

2. Equitable Tolling of the Limitations Period

Next, Poteat suggests that this Court failed to consider exceptions to the statute of limitations, including equitable tolling. Notwithstanding, at no time does Poteat allege or otherwise present factors that would warrant any sort of equitable tolling. To be sure, Poteat's responses to the motions to dismiss the Amended Complaint mentioned the term "equitable tolling." *See* ECF No. 42 at 10, 12; ECF No. 43 at 2, 9. The instant motion for reconsideration similarly mentions the term. *See, e.g.*, Mot. at ¶ 19. However, Poteat's invocation of the doctrine begins and ends there. Poteat does not indicate to the Court what, if any, circumstances

would warrant an exercise of equitable tolling of the limitations period.[3] Accordingly, in the absence of any substantive allegations or arguments as to why equitable tolling would be warranted in this matter, the Court did not err by omitting discussion of the doctrine from its prior Opinion.

3. Continuing Violation Doctrine

Next, Poteat asserts that this Court erred in failing to apply the continuing violations doctrine to his abuse of process claim. In its prior Opinion, this Court found that three of Poteat's four claimed abuses of process were time barred: (1) the issuance of the search warrant in 2013, (2) the execution of that warrant in the same year, and (3) the extradition of Poteat in July of 2014. Notwithstanding Poteat's arguments to the contrary, the continuing violations doctrine does not act to save these claims.[4]

As the Third Circuit has explained, "a 'continuing violation is occasioned by continual unlawful *acts*, not continual ill effects from an original violation.'" *See Montanez v. Sec'y Pa. Dep't of Corr.*, 773 F.3d 472, 481 (3d Cir. 2014) (quoting *Weis–Buy Servs., Inc. v. Paglia*, 411 F.3d 415, 423 (3d Cir. 2005) (emphasis added by *Montanez*)). Here, the three discrete acts that Poteat alleges as "abuses" occurred well outside of the limitations period. Moreover, that Poteat

---

[3] To the extent Poteat intends to assert that his incarceration is the circumstance that warrants application of equitable tolling principles, that argument is addressed by the Court's analysis above. For the same reasons, Poteat's incarceration does not warrant equitable tolling of the limitations period.

[4] Of note, the continuing violations doctrine is not available to a plaintiff who "is aware of the injury at the time it occurred." *See Montanez*, 773 F.3d at 481 (quoting *Morganroth & Morganroth v. Norris, McLaughlin & Marcus, P.C.*, 331 F.3d 406, 417 n. 6 (3d Cir. 2003)). The abuses that Poteat alleges here involve injuries that occur contemporaneously with the abuse, such that Poteat should have known of his injury at the time the abuse occurred. For example, to the extent Poteat alleges that the abuse entailed the improper issuance and execution of a search warrant, Poteat knew of the injury resultant from the issuance and execution of the warrant at the time it occurred. The same can be said of his extradition. Accordingly, the continuing violation doctrine is not available to Poteat.

continued to feel the "ill effects" of these actions until his release from prison does not save the claims. Rather, in order to show a true continuing violation, Poteat was required to plausibly allege a pattern of affirmative, unlawful actions that continued into the applicable limitations period. He has not. Accordingly, this Court did not err by declining to apply the continuing violations doctrine to Poteat's abuse of process claim, and his motion for reconsideration on this issue is denied.

B. Merits-Based Claims of Error

In his motion, Poteat next asserts that this Court erred in its substantive review of his deprivation of due process claim and conspiracy claim. For the reasons set forth below, the Court concludes that no error occurred in the review of these claims, and accordingly, Poteat's motion for reconsideration is denied with respect to these claims.

1. Deprivation of Due Process Claims

Poteat seeks reconsideration of his due process deprivation claim, in which he asserts he was deprived of due process as a result of the speedy trial violation in his underlying case. As he has previously, Poteat again claims that he was not provided relief for the due process violation that he suffered, until the time at which he was released due to the speedy trial act violation.

Notwithstanding, as this Court has already explained, Poteat has already received a remedy for the speedy trial violation. Specifically, Poteat's conviction was vacated, and he was released from his incarceration as a result of the speedy trial violation. That is the "categorical" remedy for a speedy trial violation. *See United States v. Ray*, 57 F.3d 184, 191 (2d Cir. 2009) (citing *Strunk v. United States*, 412 U.S. 434, 440 (1973)). As explained in the Court's Opinion of May 20, 2022, Poteat's claim for "compensation" during the time of his incarceration is not

actionable in a claim of this type.[5] Accordingly, Poteat's motion for reconsideration is denied with respect to this claim.

2. Conspiracy Claim

Poteat next asserts that this Court erred in its review of his conspiracy claim. However, Poteat does not point to any error of law or fact in his motion. Rather, Poteat merely restates much of his prior arguments regarding his conspiracy claim. In particular, Poteat asserts that his claims "indisputably include corroboration" among the Defendants. *See* Mot. ¶ 40. Poteat believes that this allegation is sufficient to establish a claim of conspiracy. *See id.* ¶ 41. Notwithstanding, as the Court indicated in its prior Opinion, Poteat cannot simply invoke the term "conspiracy" and make it so. *See* Op. 5/20/22 at 14. Rather, Poteat was required to allege facts that would plausibly support that a meeting of the minds occurred between the Defendants. He did not so allege. Having presented no viable claim of legal or factual error with respect to this Court's review of Poteat's conspiracy claim, Poteat's motion for reconsideration of his conspiracy claim is dismissed.

C. Malicious Prosecution Claim

Finally, Poteat asserts that this Court committed legal error in the dismissal of his malicious prosecution claim. In particular, Poteat points to a recent change in the law brought on by *Thompson v. Clark*, 142 S. Ct. 1332, 1341 (2022). There, the Supreme Court held that "a Fourth Amendment claim under § 1983 for malicious prosecution does not require the plaintiff to

---

[5] Moreover, even to the extent such compensatory relief was available, the parties Poteat seeks to hold accountable for the speedy trial violation are immune to monetary liability for their decision to initiate and pursue a criminal prosecution against Poteat. *See Manning v. Mills*, 543 F. App'x 256, 257 (3d Cir. 2013) ("State prosecutors are afforded absolute immunity from civil suit under § 1983 for the initiation and pursuit of criminal prosecutions." (citing *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976))).

show that the criminal prosecution ended with some affirmative indication of innocence." *See id.* Rather, "[a] plaintiff need only show that the criminal prosecution ended without a conviction." *See id.*

In its prior Opinion, this Court determined that the dismissal of Clark's charges on the basis of a speedy trial violation did not indicate his innocence. *See* Op. 5/20/22 at 9–10. Based on the standard announced in *Thompson*, that conclusion was in error. Rather, under *Thompson*, it is likely that the disposition of Clark's charges satisfies the "favorable termination" element of a malicious prosecution claim. Accordingly, this Court grants the motion for reconsideration on Poteat's malicious prosecution claim, and it now turns to reconsider that claim.

In order to state a claim for malicious prosecution, Poteat must allege (1) that a Defendant initiated a criminal proceeding, (2) that the proceeding ended in Poteat's favor, (3) it was initiated without probable cause, (4) the Defendant acted maliciously in initiating the prosecution, and (5) Poteat was seized. *See Malcomb*, 535 F. App'x at 186 (quoting *Kossler*, 564 F.3d at 186). Although Poteat alleges some of these elements, he fails to allege that the proceedings were initiated without probable cause.

"To prevail on a malicious prosecution claim where the plaintiff was held pursuant to a warrant, the plaintiff must show that the officers 'knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that created a falsehood in applying for a warrant.'" *See Quintana v. City of Philadelphia*, Civ. A. No. 17-0996, 2018 WL 3632144, at *6 (E.D. Pa. July 30, 2018) (quoting *Andrews v. Sculli*, 853 F.3d 690, 697 (3d Cir. 2017)). In his Amended Complaint, Poteat provides no substantive allegations that any of the Defendants knowingly, deliberately, or recklessly made false statements or omissions in obtaining the

warrant for his arrest. Accordingly, Poteat failed to allege facts sufficient to show a lack of probable cause for his arrest.

Moreover, in his response to the DA Defendant's Motion to Dismiss the Amended Complaint, Poteat suggested that he was not in fact challenging whether probable cause existed at the outset of the criminal proceedings. *See* ECF No. 42 ¶¶ 18–20. Instead, Poteat argues that probable cause "expired" when the speedy trial clock expired. *See id.* As the Court explained in its prior Opinion, a plaintiff asserting a malicious prosecution claim must allege that the proceeding was "*initiated* without probable cause." *See* Op. 5/20/22 at 6 (emphasis added) (citing *See Malcomb*, 535 F. App'x at 186). Accordingly, Poteat's theory that probable cause expired at some point after the initiation of the criminal proceeding cannot sustain a claim for malicious prosecution.

In the absence of any allegations in the Amended Complaint that would establish Poteat's arrest warrant was the product of false statements or omissions, Poteat has failed to sufficiently allege that the criminal proceedings were initiated without probable cause. Therefore, on reconsideration, Poteat's claim of malicious prosecution remains dismissed.

Moreover, the dismissal remains one with prejudice. *See Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004) (holding that "even when a plaintiff does not seek leave to amend, if a complaint is vulnerable to 12(b)(6) dismissal, a District Court must permit a curative amendment, unless an amendment would be inequitable or futile"). In this instance, to permit amendment would be both inequitable and futile. Foremost, Defendants twice addressed the matter of Poteat's failure to sufficiently allege probable cause in his malicious prosecution claim. *See* ECF Nos. 23 and 40. Moreover, Poteat acknowledged Defendants' arguments related to probable cause, addressing the same in his responsive brief to the Motion to Dismiss the

Amended Complaint. *See* Resp. ¶¶ 17–20. Notwithstanding notice of the deficiencies in his allegations related to probable cause, Poteat did not correct those deficiencies in his Amended Complaint. *See Krantz v. Prudential Invs. Fund Mgmt. LLC*, 305 F.3d 140, 144-45 (3d Cir. 2002) ("A District Court has discretion to deny a plaintiff leave to amend where the plaintiff was put on notice as to the deficiencies in his complaint, but chose not to resolve them.").

In addition, to permit further amendment in this case would be futile. Poteat himself indicates that his argument as to probable cause is that it "expired" at some point after the initiation of the prosecution, when the speedy trial clock had run. *See* ECFF No. 42 ¶¶ 17–20. As the Court noted above, the proper probable cause inquiry in a malicious prosecution case is whether probable cause existed at the *initiation* of the criminal proceedings. Accordingly, an amendment to simply claim that probable cause expired at some point after the initiation of the action would be futile. For those reasons, the dismissal of Poteat's malicious prosecution claim remains one with prejudice.

V. CONCLUSION

Following a review of Poteat's Motion for Reconsideration, the motion is granted in part and denied in part. The motion is granted as to Poteat's claim of malicious prosecution, but it is denied as to all remaining claims.

Upon a reconsideration of Poteat's malicious prosecution claim under the proper governing standard, the Court concludes that Poteat has failed to state a plausible claim for relief. Accordingly, the claim remains dismissed. For the reasons discussed above, the dismissal is one with prejudice, and the matter remains closed.

A separate Order follows.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANTOINE POTEAT, Plaintiff,	:	
v.	:	No. 5:21-cv-03117
GERALD LYDON, *et al.*, Defendants.	:	

OPINION
Defendants' Motions to Dismiss, ECF Nos. 23 and 24 – Granted

Joseph F. Leeson, Jr.
United States District Judge

January 7, 2022

I. INTRODUCTION

This matter involves claims arising under 42 U.S.C. § 1983 brought by pro se Plaintiff Antoine Poteat against more than a dozen Defendants, many of whom are employed by either the Pennsylvania State Police or the Lehigh County District Attorney's Office. Poteat raises claims involving the Fourth and Fourteenth amendments, as well as tort claims for intentional infliction of emotional distress and malicious prosecution. Poteat further alleges that Defendants conspired to violate his rights. Defendants now move to dismiss the Complaint in its entirety.[1]

Following a review of the Complaint and the Defendants' motions to dismiss, this Court grants both motions and dismisses the Complaint in part with prejudice and in part without prejudice.

[1] Two sets of Defendants each filed separate motions to dismiss. The first motion, ECF No. 23, was filed by Defendants Heather Gallauger, James Martin, Edward Ressler, Joseph Stauffer, and Bethany Zampogna. The second motion, ECF No. 24, was filed by Defendants Gregory Emory, Nicholas Goldsmith, Justin Julius, Brian Konopka, Chad Labour, and Gerald Lydon.

II. BACKGROUND

The background is taken, in large part, from allegations in Poteat's Complaint. *See* Compl., ECF No. 1. On February 20, 2013, Poteat was pulled over by Defendant Gerald Lydon. *See id.* ¶ 1. During the traffic stop, Lydon alleges that he smelled marijuana coming from Poteat's vehicle. *See id.* ¶ 3. Thereafter, two officers arrived with a K-9, and they asked Poteat to step out of his vehicle. *See id.* ¶ 5-6. Poteat alleges that Lydon issued Poteat a warning for the traffic violation and informed Poteat that he was free to leave. *See id.* ¶¶ 8-9. Thereafter, Poteat alleges that Lydon then asked Poteat if anything illegal was in the vehicle. *See id.* ¶ 10. Poteat denied having anything illegal in the car and did not consent to a search. *See id.* ¶ 12. Poteat continued to refuse a search of the vehicle, so the officers walked the K-9 around the vehicle. *See id.* ¶¶ 19-22. Lydon told Poteat that the K-9 alerted on the vehicle, and Lydon indicated that he would be applying for a search warrant for Poteat's vehicle. *See id.* ¶¶ 23, 26. Poteat agreed to go to the Pennsylvania State Police barracks where his vehicle would be towed. *See id.* ¶¶ 29-30. While in the back of the police car, Poteat alleges that he saw one of the officers enter his vehicle and move items from the armrest to the passenger seat. *See id.* ¶¶ 34-35.

Once at the barracks, Lydon applied for a search warrant that was approved by a magistrate judge. *See id.* ¶¶ 38-40. That evening, Lydon and other officers searched the vehicle and seized two plastic bags of suspected cocaine and two bags of suspected marijuana, among other items. *See id.* ¶¶ 41-44. As a result, on February 26, 2013, Lydon filed charges against Poteat. *See id.* ¶ 50. While processing Poteat, Lydon included the extradition code "SSO" or "Surrounding States Only," despite knowing Poteat's address. *See id.* ¶ 51. Pursuant to an arrest warrant, Poteat was arrested on May 27, 2014 in Maryland. *See id.* ¶ 54. Poteat was taken into

custody at the Harford County Detention Center and served extradition papers for charges in Virginia. *See id.* ¶ 57. However, Poteat alleges that no detainer nor extradition proceedings were brought by Pennsylvania authorities to bring Poteat to Pennsylvania. *See id.* ¶ 58.

On May 29, 2014, Poteat was extradited to Virginia. *See id.* ¶ 60. While the facts that follow are unclear, it appears from the Complaint that there was disagreement over whether Poteat would be extradited to Pennsylvania for the charges stemming from February 2013. *See id.* ¶¶ 61-68. Eventually, on July 16, 2014, Poteat was extradited to Pennsylvania. *See id.* ¶ 70.

On August 5, 2015, relating to Poteat's Pennsylvania charges, Poteat alleges that Lydon again applied for a search warrant, but Poteat does not indicate what that warrant related to. *See id.* ¶¶ 77-78. On September 21, 2015, Poteat was convicted on all counts in a non-jury trial. *See id.* ¶ 79. On October 10, 2015, Poteat was sentenced to 5-10 years' incarceration. *See id.* ¶ 80. The Pennsylvania Superior Court affirmed his conviction, and Poteat's petitions for Pennsylvania Supreme Court review and United States Supreme Court review were both denied. *See id.* ¶¶ 81-83.

On September 21, 2018, Poteat filed a PCRA petition. *See id.* ¶ 84. On July 8, 2019,[2] the PCRA court determined that the Commonwealth had violated Rule 600 of the Pennsylvania Rules of Criminal Procedure, and accordingly, the PCRA court vacated Poteat's sentence. *See id.* ¶ 89; ECF No. 24-2 at Ex. B. On July 9, 2019, Poteat was released from prison. *See* Compl. ¶ 90.

On July 12, 2021, Poteat filed the instant Complaint, asserting five counts against more than a dozen Defendants. In Count I, Poteat asserts a claim under the Fourth Amendment for

---

[2] The order vacating Poteat's sentence, which Defendants attach to their motion, is dated July 2, 2019. *See* ECF No. 24-2 at Ex. B. However, it is possible that Poteat did not receive notice of this Order under July 8, 2019.

unreasonable search and seizure. In Count II, Poteat asserts a claim for malicious prosecution. In Count III, Poteat claims intentional infliction of emotional distress. In Count IV, Poteat asserts nine claims under the Fourteenth Amendment, including due process, false imprisonment, abuse of process, equal protection of laws, wrongful conviction, negligent training, negligence, rights to liberty, and right to property. In Count V, Poteat asserts that the Defendants engaged in a conspiracy to interfere with his civil rights.

On September 20, 2021 a group of named Defendants consisting of Heather Gallauger, Jared Hanna, James Martin, Edward Ressler, Joseph Stauffer, and Bethany Zampogna moved to dismiss Poteat's Complaint. *See* ECF No. 23. On September 24, 2021, another group of named Defendants consisting of Gregory Emory, Nicholas Goldsmith, Justin Julius, Brian Konopka, Chad Labour, and Lydon moved to dismiss Poteat's Complaint. *See* ECF No. 24. Poteat responded to the motions on November 8, 2021.[3] *See* Resp., ECF No. 26.

III. LEGAL STANDARDS

A. Motion to Dismiss – Review of Applicable Law

In rendering a decision on a motion to dismiss, this Court must "accept all factual allegations as true [and] construe the complaint in the light most favorable to the plaintiff." *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008) (quoting *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)) (cleaned up). Only if "the '[f]actual allegations . . . raise a right to relief above the speculative level'" has the plaintiff stated a plausible claim. *Id.* at 234 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "A

[3] In addition to his response, Poteat filed a request for more time to respond to the motions to dismiss. *See* ECF No. 27. This Court granted that request and provided Poteat until November 29, 2021 to file any supplemental response to the pending motions. *See* ECF No. 28. To date, no supplemental response has been filed.

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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id.* (explaining that determining "whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense"). "In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." *See Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010). The defendant bears the burden of demonstrating that a plaintiff has failed to state a claim upon which relief can be granted. *See Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005) (citing *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991)).

B. Statute of Limitations for § 1983 Claims – Review of Applicable Law

"Claims brought under § 1983 are subject to the state statutes of limitations governing personal injury actions." *See Moore v. Giorla*, 302 F. Supp. 3d 700, 706 (E.D. Pa. 2018) (citing *Garvin v. City of Philadelphia*, 354 F.3d 215, 220 (3d Cir. 2003)). The Pennsylvania statute of limitations for personal injury actions, which is applicable in the instant case, is two years. *Id.*

C. Malicious Prosecution – Review of Applicable Law

To state a claim for malicious prosecution, a plaintiff must show:

(1) "the defendants initiated a criminal proceeding;"

(2) the proceeding "ended in plaintiff's favor;"

(3) "the proceeding was initiated without probable cause;"

(4) "the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice;" and

(5) "the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding."

Malcomb v. McKean, 535 F. App'x 184, 186 (3d Cir. 2013) (quoting *Kossler v. Crisanti*, 564 F.3d 181, 186 (3d Cir. 2009)).

D. Intentional Infliction of Emotional Distress – Review of Applicable Law

"An action for [IIED] requires a plaintiff to show that (1) the conduct is extreme; (2) the conduct is intentional or reckless; (3) the conduct caused emotional distress; and (4) the distress is severe." *Kornegey v. City of Philadelphia*, 299 F. Supp. 3d 675, 683 (E.D. Pa. 2018) (citing, *inter alia*, *Arnold v. City of Philadelphia*, 151 F. Supp. 3d 568, 579 (E.D. Pa. 2015)). "To state a claim for IIED in Pennsylvania, a plaintiff must demonstrate that the defendant's conduct was 'so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized society.'" *Id.* (quoting *McGreevy v. Stroup*, 413 F.3d 359, 371 (3d Cir. 2005)).

E. 14th Amendment Due Process Claim – Review of Applicable Law

"To state a claim under § 1983 for deprivation of procedural due process rights, a plaintiff must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of 'life, liberty, or property,' and (2) the procedures available to him did not provide 'due process of law.'" *Hill v. Borough of Kutztown*, 455 F.3d 225, 233-34 (3d Cir. 2006) (citing *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000)).

F. Abuse of Process – Review of Applicable Law

"The common law tort of abuse of process is defined as the perversion of legal process after it has begun 'primarily to accomplish a purpose for which it is not designed.'" *See Ciolli*, 625 F. Supp. 2d at 296 (quoting *Werner v. Plater–Zyberk*, 799 A.2d 776, 785 (Pa. Super. Ct. 2002)). "To state a claim for abuse of process, a plaintiff must allege facts sufficient to show that 'the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed, and (3) harm has been caused to the plaintiff.'" *See EMC Outdoor, LLC v. Stuart*, Civ. A. No. 17-5712, 2018 WL 3208155, at *3 (E.D. Pa. June 28, 2018) (quoting *Naythons v. Stradley, Ronon, Stevens & Young, LLP*, No. 07-4489 (RMB), 2008 WL 1914750, at *3 (E.D. Pa. Apr. 30, 2008)).

The tort is designed to prevent the "use of legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process." *See id.* (quoting *Al Hamilton Contracting Co. v. Cowder*, 644 A.2d 188, 191 (Pa. Super. Ct. 1994)). A defendant's "bad or malicious intentions" are not enough; "[r]ather there must be an act or threat not authorized by the process, or the process must be used for an illegitimate aim such as extortion, blackmail, or to coerce or compel the plaintiff to take some collateral action." *See id.* (quoting *Al Hamilton Contracting*, 644 A.2d at 192).

G. Conspiracy under § 1983 – Review of Applicable Law

To make out a conspiracy to violate one's civil rights under § 1983, a plaintiff must show "(1) the existence of a conspiracy involving state action; and (2) a deprivation of civil rights in furtherance of the conspiracy by a party to the conspiracy." *See Rosembert v. Borough of East Lansdowne*, 14 F. Supp. 3d 631, 647 (E.D. Pa. 2014) (quoting *Gale v. Storti*, 608 F. Supp. 2d

629, 635 (E.D. Pa. 2009)). "A plaintiff must allege that there was an agreement or meeting of the minds to violate his constitutional rights." *Id.*

H. False Imprisonment – Review of Applicable Law

"[F]alse imprisonment consists of detention without legal process." *Wallace v. Kato*, 549 U.S. 384, 389 (2007). "[A] false imprisonment ends once the victim becomes held pursuant to such process—when, for example, he is bound over by a magistrate or arraigned on charges." *See id.* "Thereafter, unlawful detention forms part of the damages for the 'entirely distinct' tort of malicious prosecution." *See id.* Accordingly, the statute of limitations for a false imprisonment claim runs from the date that legal process is initiated against the detained, not the date of ultimate release from custody. *See id.*

IV. ANALYSIS

A. Statute of Limitations

Defendants first argue that all of Poteat's claims are barred by the statute of limitations. As noted above, a plaintiff in this state has two years from the date of accrual to bring his § 1983 claims. Defendants note that the most recent accrual event alleged, namely Poteat's release from prison, occurred on July 9, 2019. Poteat's Complaint was given a file date of July 12, 2021. However, Poteat signed and dated the Complaint July 7, 2021. Accordingly, in light of the mail delays and changes to the filing procedures that resulted from the COVID-19 pandemic, this Court affords Poteat the benefit of the doubt and reviews his claims on the merits to the extent that they are based on the ultimate vacation of his sentence and his release from prison.

Notwithstanding, Poteat's Fourth Amendment claim, Count I, and false imprisonment claim, part of Count IV, are time barred. In Count I, Poteat alleges claims of unreasonable search and seizure. Poteat alleges two separate searches: one that occurred in February of 2013

and another that occurred in September of 2015. Accordingly, regardless of which search forms the basis for this claim, the two-year limitations period expired well before Poteat filed the instant Complaint. Therefore, Count I is dismissed with prejudice. Additionally, Poteat's false imprisonment claim, which is part of Count IV, is also time barred. To the extent Poteat's detention constituted a false imprisonment, the claim ultimately accrued on the date that legal process was brought against Poteat.[4] *See Wallace*, 549 U.S. at 389. From Poteat's allegations, it appears that the most recent arraignment occurred sometime during the summer months of 2014. Accordingly, the two-year statute of limitations on this claim had long run by the time Poteat filed the instant Complaint. Accordingly, Poteat's false imprisonment claim in Count IV is dismissed with prejudice.

B. Malicious Prosecution (Count II)

In Count II, Poteat asserts a claim for malicious prosecution. In order to state a claim for malicious prosecution, among other elements, a plaintiff must show that the underlying proceedings terminated in his favor. *Malcomb*, 535 F. App'x at 186 (3d Cir. 2013) (quoting *Kossler*, 564 F.3d at 186). The Third Circuit has held that "a prior criminal case must have been disposed of in a way that indicates the innocence of the accused in order to satisfy the favorable termination element." *See Kossler*, 564 F.3d at 186 (citing *Donahue v. Gavin*, 280 F.3d 371, 383 (3d Cir. 2002)). Significantly, "the eventual dismissal of [a] federal prosecution due to a violation of the Speedy Trial Act does not constitute a favorable termination in that the dismissal here does not reflect the merits of the underlying criminal charges, only a violation of statutory

[4] As *Wallace* instructs, once the imprisoned individual is arraigned, any unlawful detention is challengeable through a claim for malicious prosecution, which Poteat does raise and which this Court addresses below. *See Wallace*, 549 U.S. at 389

procedural requirements." *See Noble v. City of Erie*, 1:18-cv-06, 2021 WL 3609987, at *5 (W.D. Pa. July 15, 2021) (citing *Cordova v. City of Albuquerque*, 816 F.3d 645, 652 (10th Cir. 2016)).

Here, Poteat's proceedings terminated via an order from the PCRA court vacating his sentence. In that order, the presiding judge indicated that the basis for vacating the sentence was the government's violation of Rule 600 of the Pennsylvania Rules of Criminal Procedure. *See* ECF No. 24-2. Rule 600 governs a defendant's right to a speedy trial in Pennsylvania. Accordingly, Poteat's criminal prosecution was terminated on the basis of a speedy trial violation. Like *Noble*, this termination does not indicate Poteat's innocence; rather, it represents a dismissal based on a procedural violation. *See id.* at *5. Poteat has failed to otherwise allege that the proceedings terminated in a manner that would indicate his innocence, and for that reason, he has failed to state a claim for malicious prosecution. Therefore, Count II is dismissed without prejudice.[5]

C. Intentional Infliction of Emotional Distress (Count III)

In order to state a claim for IIED, Poteat must allege (1) extreme conduct, (2) that is intentional or reckless, and (3) that causes severe emotional distress. *See Kornegey*, 299 F. Supp. 3d at 683 (citing, *inter alia*, *Arnold*, 151 F. Supp. 3d at 579). Here, Poteat merely alleges that the Defendants acted in a manner that was "malicious and shocking to the conscience." *See* Compl. ¶ 108. The mere recitation of IIED elements is insufficient to state a plausible claim for the same. Poteat fails to indicate what conduct was extreme or how any severe emotional distress

[5] In Count IV, Poteat asserts a claim of "wrongful conviction." However, Poteat does not include any allegations to support this claim or to otherwise differentiate it from his malicious prosecution claim. In the absence of any allegations to independently support this claim, this Court treats the wrongful conviction claim as duplicative of Poteat's malicious prosecution claim. Accordingly, the wrongful conviction claim of Count IV is dismissed without prejudice.

manifested as a result of that conduct. Accordingly, Poteat's claim for IIED, Count III, is dismissed without prejudice.

D. Fourteenth Amendment Claims (Count IV)

In Count IV of his Complaint, Poteat lists nine separate claims that he wishes to bring under the Fourteenth Amendment. However, the only novel allegation in Count IV states that "[a]ll said name[d] Defendants above violated clearly established federal and state rights under color of law." *See* Compl. ¶ 110. Despite the lack of supportive allegations, this Court interprets the claims liberally and addresses them in turn below.

1. Due Process

Poteat asserts a claim for violation of due process. Notwithstanding, Poteat does not allege what process he was denied during the underlying proceedings. Construing his Complaint in the most liberal fashion, it is possible that Poteat wishes to claim that the speedy trial violation constitutes a due process violation. However, to the extent that is the crux of Poteat's claim, he has failed to sufficiently plead an actionable claim.

"In procedural due process claims, . . . "[t]he constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." *Zinermon v. Burch*, 494 U.S. 113, 126 (1990). Here, Poteat's allegations indicate that he was provided an opportunity to be heard regarding the speedy trial violation. *See* Compl. ¶ 89. Significantly, Poteat alleges that the PCRA Judge vacated his sentence on July 8, 2019, and Poteat was released from custody on July 9, 2019. *See id.* ¶¶ 89-90. Accordingly, Poteat was provided both process and a remedy for the speedy trial violation. Thus, because the state had not deprived Poteat of due process for the speedy trial violation, the claim is not yet actionable as pleaded, and it is dismissed without prejudice.

2. Abuse of Process

In order to state a claim for abuse of process, Poteat must allege that the Defendants used a legal process against him, to accomplish an improper purpose, that resulted in harm to Poteat. *See EMC Outdoor, LLC*, 2018 WL 3208155, at *3. Here, however, Poteat does not allege what process Defendants used or how that use was improper. Rather, "abuse of process" is merely listed among eight other claims in Count IV, and no elaboration is provided for this specific claim. Accordingly, in the absence of any allegations as to what process the Defendants abused, Poteat has failed to state a claim, and this claim is dismissed without prejudice.

3. Remaining Fourteenth Amendment Claims

In addition to those claims already addressed from Count IV, Poteat lists several other claims, including negligent training, negligence, rights to liberty, rights to property and equal protection of the law. Poteat does not allege any facts to support these claims. Instead, Poteat simply lists these causes of action and states that "[a]ll said name[d] Defendants above violated clearly established federal and state rights under color of law." *See* Compl. ¶ 110. Even under the most liberal construction of Poteat's Complaint, he fails to set forth any allegations that support any of these remaining causes of action. Accordingly, these remaining claims in Count IV are dismissed without prejudice.

E. Conspiracy to Interfere with Civil Rights (Count V)

Finally, Poteat asserts that the Defendants conspired to interfere with his civil rights. Notwithstanding, this claim fails for two reasons. First, Poteat has failed to state a claim with respect to any of his other claims. Accordingly, there is no surviving underlying claim upon which to ground a claim of conspiracy. Second, even if one of his underlying claims had survived, Poteat does not allege any facts that would indicate that the Defendants conspired with

one another to achieve a joint purpose. Importantly, Poteat does not allege any meeting of the minds or agreement between the several named Defendants to violate Poteat's rights. Accordingly, Count IV is dismissed without prejudice.

V. CONCLUSION

Following a review of his pro se Complaint, Poteat's Fourth Amendment claim in Count I and false imprisonment claim in Count IV are time barred, and accordingly, they are dismissed with prejudice. The remaining claims in Counts II through V are insufficiently pleaded. Accordingly, those claims are dismissed without prejudice. As to Counts II through V, this Court cannot say at this time whether amendment would be inequitable or futile. *See Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). Therefore, Poteat is granted leave to file an amended complaint only as to those Counts dismissed without prejudice.

A separate Order follows.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge