United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 28, 2024
Lyle W. Cayce
Clerk

No. 23-40700
Summary Calendar

JESSE A. REYNOLDS,

Plaintiff—Appellant,

versus

TITUS COUNTY; TITUS COUNTY SHERIFF'S OFFICE; BRIAN LEE, *Titus County Judge, Individually and in Official Capacity*; JOHN COBERN, *Titus County Attorney, Individually and in Official Capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:23-CV-99

Before DAVIS, HO, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Plaintiff-Appellant, Jesse A. Reynolds, proceeding *pro se* and *in forma pauperis* ("IFP"), filed a civil rights complaint against Titus County, Titus County Sheriff's Office, Titus County Judge Brian Lee, and Titus County Attorney John Cobern (collectively "Defendants"). The district court

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

APPENDIX A

dismissed his complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim, as frivolous, and for seeking money damages from defendants immune from such relief. We AFFIRM.

I.

On September 26, 2023, Reynolds filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Defendants conspired to deprive him of his civil rights, including "his right to bear arms protected by the 2nd Amendment, his rights to due process . . . , and rights against unreasonable searches and seizures."[1] In particular, Reynolds's complaint asserts that a Titus County law enforcement officer violated his Second and Fourth Amendment rights by falsely arresting him and unlawfully confiscating his firearm and vehicle. Reynolds further alleges that Titus County Attorney, John Cobern, filed misdemeanor charges against him with malicious intent and violated his civil rights by failing to drop these charges due to insufficient evidence. The complaint also states that Titus County Judge, Brian Lee, deprived Reynolds of his civil rights in the following ways: (1) ordering a competency examination of Reynolds in violation of state procedure; (2) ruling Reynolds incompetent without a trial or the opportunity to present evidence; and (3) dismissing the charges against Reynolds without notifying him. Finally, Reynolds's complaint alleges that Titus County violated his civil rights given the above violations of its officers and "by creating a false sense of law & order, and abuse of process by the county court system." For relief, Reynolds seeks $92,382,812 in damages.

[1] In addition to filing his *pro se* complaint, Reynolds also filed a motion to proceed IFP. The magistrate judge granted Reynolds's motion to proceed IFP.

The magistrate judge recommended the dismissal of Reynolds's complaint *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2)(B).[2] Specifically, the magistrate judge concluded that Reynolds's claims against the County Attorney and Judge are barred by judicial and prosecutorial immunity, his claims against Titus County and the Titus County Sheriff's Office are barred by the statute of limitations, and his alleged claims of damages are frivolous and implausible. Additionally, the magistrate judge recommended dismissal with prejudice because permitting Reynolds the opportunity to amend would be futile given that his claims are barred by the statute of limitations or immunity. The district court adopted the magistrate judge's report and recommendation, and overruled Reynolds's objections.[3] Reynolds filed a timely notice of appeal.

II.

"We review a determination that a case is frivolous under § 1915(e)(2)(B)(i) for abuse of discretion."[4] A complaint is considered frivolous under this section "if it has no arguable basis in law or in fact."[5] Additionally, we review *de novo* a district court's dismissal under § 1915(e)(2)(B)(ii)–(iii) for failure to state a claim or because a complaint

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[2] Section 1915(e)(2)(B) allows a district court to *sua sponte* dismiss an IFP complaint if the suit is "frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief."

[3] The district court adopted the magistrate judge's report in full but noted that although "the Court does not disagree with the report's comments about the alleged damages, the Court finds it unnecessary to address the merits of the accounting for Plaintiff's business plans because Plaintiff fails to state a claim because of both immunity and tolling issues."

[4] *Newsome v. E.E.O.C.*, 301 F.3d 227, 231 (5th Cir. 2002) (per curiam) (citation omitted).

[5] *Ruiz v. United States*, 160 F.3d 273, 274–75 (5th Cir. 1998) (per curiam).

seeks relief from a defendant immune from such suits.[6] Because the district court here referred to all three sections of § 1915(e)(2)(B) in dismissing Reynolds's complaint, we review the issues *de novo*.[7]

On appeal, Reynolds asserts that the various types of immunity invoked by the district court are not absolute and are inapplicable in cases involving a "conspiracy to deprive a person of their civil rights." Reynolds further argues that the statute of limitations is tolled for his false arrest claims against Titus County and the Titus County Sheriff's Office, and thus the district court erred in dismissing these claims as time-barred.

As to Judge Lee, the district court correctly dismissed Reynolds's claims pursuant to § 1915(e)(2)(B)(iii) based on judicial immunity. Judges are immune from damages suits for all actions taken in their judicial capacity, unless such actions are taken in the "clear absence of all jurisdiction."[8] Reynolds does not allege that Judge Lee acted in the absence of jurisdiction or in a non-judicial capacity. Additionally, Reynolds's argument that judicial immunity is inapplicable here because Judge Lee acted in bad faith is without merit given that judicial immunity "applies even when the judge is accused of acting maliciously and corruptly."[9] Accordingly, we find no error in the district court's dismissal of Reynolds's claims against Judge Lee.

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[6] *Newsome*, 301 F.3d at 231 (stating the standard of review for § 1915(e)(2)(B)(ii)); *Perez v. United States*, 481 F. App'x 203, 206 (5th Cir. 2012) (per curiam) (unpublished) (stating the standard of review for § 1915(e)(2)(B)(iii)).

[7] *Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005) (per curiam) (citation omitted).

[8] *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978) (internal quotation marks and citation omitted).

[9] *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (per curiam) (internal quotation marks and citation omitted).

As to Titus County Attorney, John Cobern, we also conclude the district court correctly dismissed Reynolds's claims pursuant to § 1915(e)(2)(B)(iii) based on prosecutorial immunity. "A prosecutor is absolutely immune when []he acts in h[is] role as an advocate for the state by initiating and pursuing prosecution."[10] Such "[a]bsolute immunity shields prosecutors even when they initiate prosecution maliciously, wantonly, or negligently."[11] As explained by the district court, Reynolds's assertions that prosecutorial immunity is inapplicable here because Cobern withheld evidence, relied on a "fabricated" report by a court-appointed psychologist, and conspired against Reynolds are all foreclosed by precedent.[12] Thus, we affirm the dismissal of Reynolds's claims against John Cobern on grounds of immunity.

Finally, Reynolds's claims against Titus County and the Titus County Sheriff's Office are barred by the statute of limitations and therefore were properly dismissed under § 1915(e)(2)(B)(ii). Because there "is no federal statute of limitations for civil rights actions brought pursuant to § 1983," courts must "'borrow' the forum state's general personal injury limitations

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[10] *Morgan v. Chapman*, 969 F.3d 238, 244 (5th Cir. 2020) (quoting *Beck v. Tex. State Bd. of Dental Examiners*, 204 F.3d 629, 637 (5th Cir. 2000)).

[11] *Id.* (citing *Rykers v. Alford*, 832 F.2d 895, 897 (5th Cir. 1987)).

[12] *See Cousin v. Small*, 325 F.3d 627, 635 (5th Cir. 2003) (per curiam) (noting that a prosecutor's "suppression of exculpatory evidence is shielded by absolute immunity" (citations omitted)); *Loupe v. O'Bannon*, 824 F.3d 534, 539 (5th Cir. 2016) ("A prosecutor is absolutely immune for initiating and pursuing a criminal prosecution, for actions taken in her role as advocate for the state in the courts, or when her conduct is intimately associated with the judicial phase of the criminal process." (internal quotation marks and citation omitted)).

period."[13] Courts additionally "borrow" the forum state's equitable tolling principles.[14]

In Texas, the limitations period for personal injury claims is two years.[15] Reynolds acknowledges that he waited over six years after his arrest and over four years after the charges against him were dropped before bringing the present lawsuit, and he does not dispute the two-year statute of limitations applies. Instead, he argues that the statute of limitations is tolled here for two reasons: (1) in conspiracy cases the statute of limitations does not begin to run until the last overt act, and (2) Judge Lee issued a "fraudulent order" dismissing Reynolds's charges. However, Reynolds fails to explain how either argument provides a basis for tolling his claims against Titus County and the Titus County Sheriff's Office under Texas law.[16] We thus hold that Reynolds's claims against Titus County and the Titus County Sheriff's office are time-barred.

Based on the foregoing, the district court's judgment is AFFIRMED.

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[13] *Rotella v. Pederson*, 144 F.3d 892, 897 (5th Cir. 1998) (citation omitted).

[14] *Id.* (citation omitted).

[15] TEX. CIV. PRAC. & REM. CODE § 16.003.

[16] "In Texas, two doctrines . . . may toll limitations (or delay accrual): fraudulent concealment, or injuries that are both inherently undiscoverable and objectively verifiable." *Moon v. City of El Paso*, 906 F.3d 352, 358–59 (5th Cir. 2018) (citations omitted).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

JESSE A. REYNOLDS,		
Plaintiff,	§	
v.	§	
	§	CIVIL ACTION NO. 5:23-CV-99-RWS-JBB
TITUS COUNTY, ET AL.,	§	
Defendants.	§	

ORDER

Before the Court are Plaintiff Jesse A. Reynolds's objections to the Magistrate Judge's Report and Recommendation. Docket Nos. 11–13, 15, 16.[1] Plaintiff, proceeding *pro se*, filed this lawsuit alleging violations of his constitutional rights under 42 U.S.C. § 1983 against Defendants Titus County, Titus County Sheriff's Office, Titus County Judge Brian Lee, and Titus County Attorney John Cobern. Docket No. 1. The case was referred to United States Magistrate Judge Boone Baxter pursuant to 28 U.S.C. § 636(b)(1).

I. Factual Background

The events giving rise to Plaintiff's claims occurred in a house in Titus County and the Titus County Courthouse. Docket No. 1 at 6. The approximate dates giving rise to Plaintiff's claim(s) are August 18, 2017 through May 20, 2019, and May 20, 2019 through July 24, 2023. *Id.*

First, Plaintiff alleges a law enforcement officer of Titus County falsely arrested Plaintiff and filed misdemeanor criminal charges against him "on behalf of the county" and "persons

[1] In addition to the objections and "refiled objections" (Docket Nos. 11, 12) Plaintiff also filed three notices about the abrogation doctrine, discrimination, bills of attainder, and other legal and factual issues. Docket Nos. 13, 15, 16.

involved in a burglary of the plaintiff's home." Docket No. 1 at 5, 7. Plaintiff asserts no charges were filed against those who burglarized his home. *Id.* at 7. Plaintiff asserts he was falsely arrested for practicing his self-defense rights and that a firearm was confiscated from his vehicle. *Id.* at 5.[2] When Plaintiff returned to the location to move his vehicle, he alleges he was falsely arrested again for violating a protective order which had been filed by the owner of the lease house following Plaintiff's initial arrest. *Id.* at 5, 7.[3] Plaintiff states he was not aware the owner of the lease house was at the home when he arrived. *Id.* at 5. Plaintiff alleges this arrest and confiscation of his firearm deprived him of "his right to bear arms protected by the [Second] Amendment, his rights to due process, deprivation of property, and rights against unreasonable searches and seizures." *Id.* at 5. According to Plaintiff, the county sold his firearm and did not allow Plaintiff to have his personal property or vehicle. *Id.* at 7.

Second, Plaintiff alleges John Cobern, acting in his role as the Titus County Attorney, deprived Plaintiff of his civil rights by failing to drop or dismiss the charges against Plaintiff because of the lack of evidence or because of "the plaintiff's right to self-defense guarded by the Castle Doctrine." *Id.* at 5.[4]

Third, Plaintiff alleges County Judge Brian Lee ordered that Plaintiff be examined for competency pursuant to Tex. Crim. Proc. Code Ann. art. 46B.021 without explanation or evidence.

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[2] Plaintiff alleges this arrest occurred when Plaintiff was unarmed. *Id.* at 5. Plaintiff states he was "unnecessarily maced and forced to the ground by the burglars and the county Law Enforcement Officer." *Id.*

[3] Plaintiff states the landlord of the lease house did not give notice of eviction to Plaintiff or get an eviction order from the county. *Id.* at 7.

[4] Plaintiff also alleges his hired attorney wanted him to accept a plea deal and did not attempt to create a defense, forcing Plaintiff to dismiss his hired counsel and receive a court-appointed attorney before proceeding to trial. *Id.* at 5, 7.

Id. Plaintiff also argued that he was ruled incompetent without allowing a trial or evidence to be presented by the defense. *Id.* at 5, 7. Plaintiff alleges that the private psychologist Judge Lee hired did not follow proper procedure and did not perform medical testing. *Id.* at 5, 7. Plaintiff also alleges that Judge Lee accepted the examination report and dismissed the charges against Plaintiff without notifying Plaintiff. *Id.* Plaintiff alleges Judge Lee's ruling of incompetency violated Plaintiff's due process rights and his right to own a firearm. *Id.* Plaintiff states he has evidence that proves he was competent. *Id.* at 7. Plaintiff argues Titus County acted under color of the law to deprive Plaintiff of his civil rights "as an umbrella to the rights violations of its Law Enforcement Officer, Attorney [and] Judge against the plaintiff by creating a false sense of law & order, and abuse of process by the county court system." *Id.* at 5.

Plaintiff alleges Defendants' conspiracy to deprive Plaintiff of his civil rights resulted in damages of $92,382,812,500.00. *Id.* at 9. These damages arise from an alleged loss of earning capacity, loss of ability to trade or possess certain property (firearms and ammunition), loss of planned estate, loss of time and working years, liquidation of growing real estate investment, loss of opportunity and loss of wages, legal handicap, cruel and unusual punishment (time), and damage to reputation. *Id.* at 8. Specifically, Plaintiff argues that he is entitled to $2.5 billion and $1.75 billion in damages "for the loss of the [P]laintiff's firearm right at the beginning of the [P]laintiff's manufacturing career" because Plaintiff is an "engineer designer by trade" and "[t]he Reynolds name has at least 250 years of sporting & manufacturing experience with firearms." *Id.* at 9. Plaintiff argues that profits from this firearm business would have been invested in several other businesses. *Id.* Accordingly, Plaintiff's loss of his right to own a firearm resulted in additional lost opportunities, including:

- $600 million for a shipyard business;

- $36 million for an "Aerospace & Defense" business;
- $150 million for a vehicle business and $52 million for a military aircraft business, based on plaintiff's idea of building defense equipment for the military after first visiting Red River Army Depot at a younger age;
- An import/export business that would have resulted in proceeds of $2.5 billion for steel, $1 billion for aluminum, $1.15 billion for copper, $3.375 billion for plastic, $21.25 billion for grain, and $2.5 billion for meat; and
- A business with Big Tex Trailers, estimated to be worth $90 million.

Id. at 9 (noting that these estimated losses were determined if Plaintiff began working at 25, retired at 65, with an increase of a factor of 2.5 times for the "loss of time and reputation").

II. Procedural Background

After filing his complaint, Plaintiff filed two motions to file electronically (Docket Nos. 3, 4), a motion to replace the magistrate judge with the district judge (Docket No. 5), and a motion for an interlocutory order (Docket No. 6). Shortly thereafter, on October 10, 2023, the Magistrate Judge issued a report and recommendation *sua sponte*. Docket No. 7.[1] According to the report, although the Court would ordinarily allow a *pro se* plaintiff to amend his complaint, nothing before the Court suggests that Plaintiff can meet the conditions to assert claims currently barred by limitations or immunity. *Id.* at 12. Thus, the report recommended Plaintiff's above-captioned case be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e) for failure to state a claim for which relief can be granted, for seeking relief against immune defendants, and for frivolousness. *See generally id.*

[1] In the report, the Magistrate Judge granted the *pro se* Plaintiff's motion to proceed *in forma pauperis* and ordered the complaint be filed without pre-payment of fees or costs. *Id.* at 2. The Magistrate Judge, however, ordered that service upon Defendants be withheld pending the District Court's review of the report's recommendation that the claims be dismissed under 28 U.S.C. § 1915(e). *Id.*

After the report issued, Plaintiff filed a number of different motions. First, he filed a motion for summary judgment. Docket No. 8. Then, on October 19, 2023, Plaintiff filed an "Objection to Magistrates Suggestion of Dismissal with Prejudice?" that included over 130 pages of attachments. Docket No. 11. On October 24, 2023, Plaintiff filed a "Re-filed Objection to Magistrates Suggestion of Dismissal with Prejudice?" with seventeen pages of attached "Context." Docket No. 12. Plaintiff also filed a separate document entitled "Abrogation Doctrine." Docket No. 13. On October 30, 2023, Plaintiff filed a second "Motion for Interlocutory Order," requesting that the Court direct Defendants to pay an amount of $5,000.00 per month while a decision is made regarding the requested award and to support Plaintiff's living while the requested trial proceeds. Docket No. 14.[5] Finally, Plaintiff has also filed two additional "Notices" which contain miscellaneous documents and evidence. *See* Docket Nos. 15, 16.

III. Legal Standard

A. 28 U.S.C. § 1915(e)

Section 1915(e) requires dismissal of an *in forma pauperis* complaint at any time if the court determines the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B)(i)–(iii); *see also, e.g.*, *Newsome v. E.E.O.C.*, 301 F.3d 227, 231–33 (5th Cir. 2002) (finding a district court correctly dismissed claims as frivolous and for failure to state a claim under § 1915(e)); *Bell v. Children's Protective Servs.*, 547 F. App'x 453, 457 (5th Cir. 2013) (finding a district court correctly dismissed claims that were barred by statute of limitations); *Tinsley v. Comm'r*, 958 F. Supp. 277, 280 (N.D. Tex. 1997) (dismissing *in forma pauperis*

[5] In his first "Motion for Interlocutory Order" (Docket No. 6) referenced in the report, Plaintiff requests the Court direct Defendants to pay $500.00 per month while a decision is made regarding the requested award.

complaint against defendants who were immune); *Griffin v. CPS/OCR Off.*, No. 5:20-CV-219-H-BQ, 2021 WL 1520010, at *1 (N.D. Tex. Feb. 18, 2021), *report and recommendation adopted*, No. 5:20-CV-219-H-BQ, 2021 WL 1516387 (N.D. Tex. Apr. 16, 2021) (affirming dismissal of *pro se*, non-prisoner plaintiff's claims as frivolous and for failure to state a claim under § 1915(e)(2)(B)(i) and (ii))).

B. Objections to the Report

A district court must perform a *de novo* review of the portions of a magistrate judge's report and recommendation to which any party files an objection. *Poe v. Bock*, No. EP-17-CV-00232-DCG, 2018 WL 4275839, at *2 (W.D. Tex. Sept. 7, 2018) (first citing 28 U.S.C. § 636(b)(1); and then citing *Warren v. Miles*, 230 F.3d 688, 694 (5th Cir. 2000)). The portions of the magistrate judge's report that are not objected to are reviewed for clearly erroneous factual findings and conclusions of law. *Id.* (citing *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam)). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* (first quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); and then citing *St. Aubin v. Quarterman*, 470 F.3d 1096, 1101 (5th Cir. 2006) ("A finding is clearly erroneous only if it is implausible in the light of the record considered as a whole.")).

IV. Analysis

Plaintiff's objections include a general overview of judicial immunity, prosecutorial immunity, the abrogation doctrine, federal and state tort laws, bills of attainder, discrimination, and other legal and factual issues. *See, e.g.*, Docket Nos. 11–13, 15, 16. Plaintiff's objections do not satisfactorily address the issues discussed at length in the report. The Court has conducted a careful *de novo* review of those portions of the report to which the Plaintiff objected and a plain

error review of the portions of the report to which Plaintiff did not object. Upon such review, as discussed below, the Court has determined that the report is correct and Plaintiff's objections are without merit.

A. Immunity[6]

Plaintiff's objections generally argue that the different types of immunity referenced by the report are not absolute. *See, e.g.*, Docket No. 11 at 2–5.[7]

1. Judicial Immunity

First, Plaintiff argues that judicial immunity is not absolute. Docket No. 11 at 2–3 (citing S.P Stafford, *Overview of Judicial Immunity*, U.S. Dep't of Just., (1977) https://www.ojp.gov/ncjrs/virtual-library/abstracts/overview-judicial-immunity). Plaintiff argues judicial immunity does not apply because Judge Lee and the hired psychiatrist failed to follow procedure and Judge Lee ordered a competency hearing without evidence. *Id.* (citing TEX. CODE CRIM. PROC. ANN. art. 46B.021). Plaintiff's complaint also generally alleges Judge Lee failed to serve certain papers on Plaintiff or his attorneys. *See* Docket No. 1.

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[6] Plaintiff also cites the Texas Tort Claims Act, the Federal Tort Claims Act, and the Abrogation Doctrine in his objections. Docket No. 15 at 2–3. But, given the doctrines of immunity, Plaintiff fails to persuasively argue that these laws and doctrines create a cognizable claim. For example, the cited portion of the Texas Court Claims Act is inapplicable here because it waives liability for "personal injury and death" but no physical injury or death is alleged here. *See id.* at 2.

[7] Plaintiff's objections include a statement that "Titus County and its Officials have a Policy, Practice or Custom of violating civil rights for at least two years while awaiting trial and further violation after the case was dismissed, loss of rights secured by the U.S Constitution by actors under oath for years." Docket No. 12-1 at 6 (citing, *e.g.*, *Hunter v. Cnty. of Sacramento*, 652 F.3d 1225, 1236 (9th Cir. 2011); *see also Nehad v. Browder*, 929 F.3d 1125, 1141 (9th Cir. 2019); *Christie v. Iopa,* 176 F.3d 1231, 1235 (9th Cir. 1999); *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989)). The Court understands this statement to be an objection to an application of immunity towards Titus County. This boilerplate statement, however, is not tied to any allegations in the complaint and does not sufficiently address the findings of the report, which appear correct upon review.

The Fifth Circuit considers four factors to determine whether a judge's actions are immunized because they were judicial in nature: (1) whether a "normal judicial function" was involved, (2) whether "the relevant act occur[ed] in or adjacent to a court room", (3) whether the "controversy" involved "a pending case in some manner," and (4) whether the act arose "directly out of a visit to the judge in his official capacity." *Daves v. Dallas Cnty., Texas*, 22 F.4th 522, 539 (5th Cir. 2022). The Court need only focus on the first factor in cases where the judge's act is inextricably linked to a normal judicial function. *See id.* (finding that only the first factor needed to determine a judge was immunized from suit based on "the act of selecting applicants for inclusion on a rotating list of attorneys eligible for court appointments is inextricably linked to and cannot be separated from the act of appointing counsel in a particular case, which is clearly a judicial act").

Here, the claims against Judge Lee arise out of acts that are clearly judicial in nature. Judge Lee's decision that a competency hearing was necessary,? his appointment of a psychiatrist,? his consideration of the evidence,? his ultimate determination, and the procedures he followed at all these stages are normal judicial functions. Accordingly, upon a *de novo* review, the Court finds that the Magistrate Judge correctly found that Judge Lee is immune from suit, which warrants dismissal of this claim under 28 U.S.C. § 1915(e)(2)(B)(iii).

2. Prosecutorial Immunity

Plaintiff also objects to the report because prosecutorial immunity is no longer absolute. Docket No. 11 at 3 (citing *Buckley v. Fitzsimmons*, 113 S.Ct. 2606 (1993); and then T.J. Foltz, *Prosecutorial Immunity No Longer Absolute*, CRIMINAL JUSTICE, Vol. 8 Iss. 4 at 21–24, 59–64 (1994), https://www.ojp.gov/ncjrs/virtual-library/abstracts/prosecutorial-immunity-no-longer-absolute). Specifically, Plaintiff argues that the prosecuting attorney's motion for dismissal was

improper because it relied on a psychologist's report, which did not follow due process procedures. *Id.* Plaintiff asserts prosecutorial immunity does not apply because he filed the motion for dismissal based on a "fabricated" report from a court-appointed psychologist "to his liking." Docket No. 11 at 3. Plaintiff also cites the *Brady* doctrine[8] when discussing that the prosecutor[9] failed to share a police report and failed to bring the police report to the Court's attention. *Id.* at 3–4 (citing Exhibits J, B, and K).

First, a prosecutor's reliance on an allegedly unreliable psychiatrist's report in his motion to dismiss is immunized because that was a prosecutorial decision. *See Van de Kamp v. Goldstein*, 555 U.S. 335, 342 (2009) (noting that forcing a prosecutor to mind his own potential damages liability while making prosecutorial decisions is against public interest). Second, a *Brady* violation, "the suppression of exculpatory evidence[,] is shielded by absolute immunity." *Cousin v. Small*, 325 F.3d 627, 635 (5th Cir. 2003) (first citing *Henzel v. Gerstein*, 608 F.2d 654, 657 (5th Cir. 1979); and *Reid v. New Hampshire*, 56 F.3d 332, 336 (1st Cir.1995); and then *Robinson v. Volkswagenwerk AG*, 940 F.2d 1369, 1373 n. 4 (10th Cir. 1991)). Finally, even if the Court accepts Plaintiff's objection to the application of immunity based on the new allegation that the court-appointed psychiatrist "fabricated" the report, there are no allegations in the complaint that the prosecutor was involved in that fabrication. Accordingly, upon a *de novo* review, the Court finds that the Magistrate Judge correctly found that Titus County Attorney John Cobern is immune from suit, which warrants dismissal of this claim under 28 U.S.C. § 1915(e)(2)(B)(iii).

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[8] *Brady v. Maryland*, 373 U.S. 83 (1963) (holding that prosecution must provide the defense with all evidence that might exonerate the defendant).

[9] It is unclear from the face of the complaint, and the objections, whether this failure is attributed to the prosecuting attorney or Plaintiff's counsel. For the sake of completeness, the Court assumes Plaintiff is discussing the prosecutor.

B. Statute of Limitations

Plaintiff's objections to the report's findings concerning the statute of limitations appear to be limited to Judge Lee's failure to provide Plaintiff or his attorney with a copy of the motion to dismiss before he signed his order. Docket No. 11 at 2.[10] Plaintiff argues that this failure created a legal handicap that tolls the statute of limitations. *Id.*

Having considered *de novo* the allegations contained in Plaintiff's complaint, the Court agrees with the report that Plaintiff fails to state a claim upon which relief can be granted against Titus County and Titus County Sheriff's Office based on the statute of limitations. Claims alleging constitutional violations and brought pursuant to 42 U.S.C. § 1983 are subject to Texas's two-year statute of limitations for personal injury actions. *Mosley v. Hous. Cmty. Coll. Sys.*, 951 F. Supp. 1279, 1288 (S.D. Tex. 1996) (two-year statute of limitations in TEX. CIV. PRAC. & REM. CODE § 16.003 applies to § 1983 claim). Claims for false arrest accrue upon the arrest and run until "legal process was initiated against [the defendant]." *Wallace v. Kato*, 549 U.S. 384, 390 (2007); *see also id.* at 388 (clarifying that false arrest is a "species of [false imprisonment]").

The issue remains whether Plaintiff should be allowed to amend to allege a § 1983 cause of action against Titus County and Titus County Sheriff's Office. The Court finds amendment would be futile for two reasons. First, consideration of the allegations contained in Plaintiff's objections demonstrates the futility of amendment. In the attached "Context" to the refiled objections, Plaintiff states he was "falsely arrest August 19, 2017" and "the case was dismissed May 20, 2019." Docket No. 12-1 at 1, 13. But Plaintiff did not file the above case until September 26, 2023, more than four years after the case was dismissed. Second, the only possible reason

[10] Taking the complaint's allegations as true, the Court assumes that Judge Lee should have, but did not, serve the motion at issue.

provided in support of tolling was the County and Judge Lee's failure to provide Plaintiff with a copy of the motion to dismiss.[11] Docket Nos. 11 at 2; 12 at 2. The Court generally refers to state law for tolling rules. *Wallace*, 549 U.S. at 394; *see also Madis v. Edwards*, 347 F. App'x 106, 108 (5th Cir. 2009). When Judge Lee and the County allegedly failed to serve the motion Plaintiff was represented by counsel; such counsel could have addressed any default in service through the proper procedural mechanisms. *See* Docket No. 1. Precedent shows that tolling is inapplicable in other cases where defendants are in much more disadvantageous circumstances, such as when they do not have access to counsel at all. *See Madis*, 347 F. App'x at 108–109. Accordingly, the Court finds that this alleged failure is not an "exceptional situation" under Texas law that warrants tolling. *See Madis*, 347 F. App'x at 108–109.

Because Plaintiff's claims are time-barred, Plaintiff can prove no set of facts in support of his claim against Titus County and Titus County Sheriff's Office which would entitle him to relief.

C. Miscellaneous Other Objections

Plaintiff's objections also generally mention other legal doctrines such as "[r]atification" and "[f]ailure to [t]rain." *See, e.g.*, Docket Nos. 11–13, 15, 16. These objections do not address the report's bases for dismissing the complaint, and the Court does not find these legal theories relevant or persuasive. In addition, Plaintiff's objections include documentation to support his accounting for the claimed damages. *See, e.g.*, Docket Nos. 11-2 at 4–8, 11-4–11-8. While the Court does not disagree with the report's comments about the alleged damages, the Court finds it

[11] The Court is not convinced that Plaintiff's reason for tolling is sufficiently tied to Plaintiff's allegations against Titus County and Titus County Sheriff's Office. The prosecutor or Judge Lee's failure to serve a motion to dismiss does not seem sufficiently connected to Plaintiff's false imprisonment claims to warrant tolling. The Court, however, addresses this argument to show the futility of amendment.

unnecessary to address the merits of the accounting for Plaintiff's business plans because Plaintiff fails to state a claim because of both immunity and tolling issues.

V. Conclusion

The Court has conducted a careful *de novo* review of those portions of the report to which the Plaintiff objected and a plain error review of the portions of the report to which Plaintiff did not object. Upon such review, the Court has determined that the report is correct and Plaintiff's objections are without merit. Accordingly, it is

ORDERED that Plaintiff's objections (Docket Nos. 11–13, 15, 16) are **OVERRULED**. It is further

ORDERED that the report of the Magistrate Judge (Docket No. 7) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above captioned matter is **DISMISSED WITH PREJUDICE** for failure to state a claim.

So ORDERED and SIGNED this 29th day of November, 2023.

Robert W Schroeder III

ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

JESSE A. REYNOLDS,		
Plaintiff,	§	
v.	§	
	§	CIVIL ACTION NO. 5:23-CV-99-RWS-JBB
TITUS COUNTY, ET AL.,	§	
Defendants.	§	

FINAL JUDGMENT

Pursuant to the Court's Order adopting the Report and Recommendations of the Magistrate Judge, the Court hereby enters final judgment. Accordingly, it is

ORDERED that the above-captioned case is **DISMISSED WITH PREJUDICE** for failure to state a claim. It is further

ORDERED that any pending motions in the above-captioned case are **DENIED-AS-MOOT**.

The Clerk of Court is directed to close the case.

So ORDERED and SIGNED this 29th day of November, 2023.

Robert W Schroeder III

ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

JESSE A. REYNOLDS	§	
	§	
V.	§	**No. 5:23CV99-RWS-JBB**
	§	
TITUS COUNTY, ET AL.	§	

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

On September 26, 2023, Plaintiff Jesse A. Reynolds ("Plaintiff"), proceeding *pro se*, filed a non-prisoner Complaint for Violation of Civil Rights against Titus County, Titus County Sheriff's Office, Titus County Judge Brian Lee, and Titus County Attorney John Cobern ("Defendants"). Dkt. No. 1. Plaintiff also filed a Motion to Proceed *In Forma Pauperis* (Dkt. No. 2) and a Motion to File Electronically (Dkt. No. 3).[1] The cause of action was automatically referred to the undersigned United States Magistrate Judge for pretrial purposes in accordance with 28 U.S.C. § 636.

As explained in detail below, the Court grants Plaintiff *in forma pauperis* status but orders that service upon Defendants be withheld pending the District Court's review of the recommendations made in this Report and Recommendation. It is recommended that the District Court dismiss Plaintiff's above-entitled and numbered cause of action pursuant to 28 U.S.C. § 1915(e) as frivolous, for failure to state a claim for which relief can be granted, and/or for seeking relief against immune defendants. If the District Court declines to adopt the recommendations, then service should be issued at that time upon Defendants.

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[1]Shortly thereafter, on October 3, 2023, Plaintiff filed three additional motions: (1) Second Motion to File Electronically (Dkt. No. 4); (2) Motion to Replace Magistrate Judge With District Judge (Dkt. No. 5); and (3) Motion for Interlocutory Order (Dkt. No. 6).

IFP STATUS

After considering Plaintiff's financial affidavit, the Court finds that Plaintiff is indigent. Accordingly, the Court hereby **GRANTS** Plaintiff *in forma pauperis* status (Dkt. No. 2) and **ORDERS** his Complaint be filed without pre-payment of fees or costs or giving security therefor pursuant to 28 U.S.C. § 1915(a) (1). Even if a plaintiff meets the financial prerequisites to proceed *in forma pauperis*, he must still establish that he has raised a non-frivolous issue. *Richard-Coulibaly v. Alanis*, No. CV 1:19-MC-11, 2019 WL 3752672, at *1 (E.D. Tex. Aug. 7, 2019) (citing *Unknown v. Electors for Miss.*, No.3:12-CV-671-TSL-MTP; 2012 WL 5364730, at *2 (S.D. Miss. Oct. 10, 2012) (citing *Flores v. U.S. Attorney General*, No. SA-11-CA-199-XR, 2011 WL 1486593, at *3, n.1 (W.D. Tex. Mar. 16, 2011)) ("If the Court has the authority to dismiss a non-prisoner case as frivolous once it has been filed, then the Court has the inherent authority in a non-prisoner case to deny leave to proceed in forma pauperis to preclude the filing of a frivolous complaint or claim.")).

As stated below, the undersigned has conducted a § 1915(e) review of the claims made in Plaintiff's complaint and is recommending his claims be dismissed under 28 U.S.C. § 1915(e). Therefore, service upon Defendants should be withheld pending the District Court's review of the recommendations made in this report.

STANDARD OF REVIEW

Section 1915(e) requires dismissal of an IFP complaint at any time if the court determines the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.[2] *Griffin v. CPS/OCR Off.*,

[2] Plaintiff is not a "prisoner" within the meaning of 28 U.S.C. § 1915(h) and is not subject to the screening provisions of the Prison Litigation Reform Act. Because Plaintiff sought and was granted leave to proceed IFP, however, he is nevertheless subject to screening under 28 U.S.C. § 1915(e)(2). *Griffin v. CPS/OCR Off.*, No. 5:20-CV-219-H-BQ, 2021 WL 1520010, at *1n. 2 (N.D. Tex. Feb. 18, 2021), *report and recommendation adopted*, No. 5:20-CV-219-H-BQ,

No. 5:20-CV-219-H-BQ, 2021 WL 1520010, at *1 (N.D. Tex. Feb. 18, 2021), *report and recommendation adopted*, No. 5:20-CV-219-H-BQ, 2021 WL 1516387 (N.D. Tex. Apr. 16, 2021) (citing 28 U.S.C. § 1915(e)(2)(B)(i)–(iii); also citing *Newsome v. E.E.O.C.*, 301 F.3d 227, 231–33 (5th Cir. 2002) (affirming dismissal of *pro se*, non-prisoner plaintiff's claims as frivolous and for failure to state a claim under § 1915(e)(2)(B)(i) and (ii))). A frivolous complaint lacks any arguable basis, either in fact or in law, for the wrong alleged. *Id.* (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). A complaint has no arguable basis in fact if it rests upon clearly baseless factual contentions, and similarly lacks an arguable basis in law if it embraces indisputably meritless legal theories. *Id.* (citing *Neitzke*, 490 U.S. at 327).

Factual assertions founded upon fantastic or delusional scenarios, and legal claims based on indisputably meritless theories, are frivolous under 28 U.S.C. § 1915(e)(2)(B). *Id.* at *2 (citing *Denton v. Hernandez*, 504 U.S. 25, 31–32 (1992) (quoting *Neitzke*, 490 U.S. at 328)). Indeed, where claims do "not present a logical set of facts to support any claim for relief" and instead "recite[ ] fantastic charges which are fanciful and delusional in nature ... [d]ismissal is clearly warranted...." *Id.* (quoting *Muina v. The KKK St. Joe Paper Co.*, No. 3-09-CV-0364-K, 2009 WL 1542531, at *2 (N.D. Tex. June 1, 2009) (citations omitted in *Griffin*)). The United States Supreme Court in *Denton v. Hernandez* acknowledged that district courts are "all too familiar" with factually frivolous claims and that the "clearly baseless" guidepost for determining factual frivolousness is a discretionary one. *Denton*, 504 U.S. at 33. Dismissals on grounds of frivolousness may be "made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints." *Neitzke*, 490 U.S. at 324.

2021 WL 1516387 (N.D. Tex. Apr. 16, 2021).

Further, when a plaintiff's complaint is facially frivolous and insubstantial, it is viewed as insufficient to invoke the jurisdiction of the federal courts. *Richard-Coulibaly*, 2019 WL 3752672, at *2 (citing *Dilworth v. Dallas Cty. Cmty. Coll. Dist.*, 81 F.3d 616, 617 (5th Cir. 1996)). The Supreme Court has repeatedly held that the federal courts are without power to entertain claims which may otherwise be within their jurisdiction if they are so attenuated and unsubstantial as to be absolutely devoid of merit. *Id.* (citing *Hagans v. Lavine*, 415 U.S. 528, 536 (1974) (citing *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904))). The Fifth Circuit has also upheld the dismissal of claims for lack of subject matter jurisdiction when those claims are "obviously frivolous" factually. *Id.* (citing *Maringo v. McGuirk*, 268 Fed. Appx. 309, 310 (5th Cir. 2008) (dismissing appeal as frivolous where plaintiff's claims were based on allegations that an attorney and her ghost sexually harassed him while he was detained) (citing *Neitzke*, 490 U.S. at 327; also citing *Hagans*, 415 U.S. at 536-37; *Carmichael v. United Tech. Corp.*, 835 F.2d 109, 114 (5th Cir. 1988))).

DISCUSSION

Plaintiff's allegations

In his form complaint, Plaintiff alleges Defendants have conspired to deprive Plaintiff of his civil rights, and the alleged civil rights violations caused damages to Plaintiff's "planned estate" in the total amount of $92,382,812,500.00. Dkt. No. 1 at 9. Regarding the alleged deprivation of his civil rights, Plaintiff alleges a law enforcement officer of Titus County falsely arrested Plaintiff and filed misdemeanor criminal charges against him on behalf of the county and "persons involved in a burglary of the plaintiff's home" and no charged were filed against those who burglarized his home. *Id.* at 5, 7 (asserting he was arrested, his property was removed from the lease house and left

outside on a covered porch, and a firearm was confiscated from Plaintiff's vehicle). Plaintiff states the landlord of the lease house did not give notice of eviction to Plaintiff or get an eviction order from the county. *Id.* at 7.

According to Plaintiff, when he later returned to the home to get his vehicle, he was arrested again for violating a protective order which had been filed by the owner of the lease house following Plaintiff's initial arrest. *Id.* at 5, 7. Plaintiff alleges this deprived him of "his right to bear arms protected by the 2nd Amendment, his rights to due process, deprivation of property, and rights against unreasonable searches and seizures." *Id.* at 5. Plaintiff states he was not aware the owner of the lease house was at the home when he arrived. *Id.* According to Plaintiff, the county would not allow Plaintiff to have his personal property or vehicle, and the firearm was later sold by the county. *Id.* at 7.

Plaintiff alleges Titus County Attorney, John Cobern, acted under color of law to deprive Plaintiff of his civil rights at the time of the proceedings "when the charges were not dropped or dismissed" or in light of "the plaintiff's right to self defense guarded by the Castle Doctrine." *Id.* at 5. Plaintiff alleges his hired attorney made no attempt to create a defense (and instead wanted Plaintiff to accept a plea deal) so Plaintiff received a court-appointed attorney and requested a trial. *Id.* at 7.

According to Plaintiff, on March 6, 2019, County Judge Brian Lee ordered – without explanation or evidence – that Plaintiff be examined pursuant to Art. 46B.021 and had Plaintiff ruled incompetent, without allowing a trial or evidence to be presented by the defense. *Id.* at 5, 7. Plaintiff alleges Lee hired a private psychologist to examine Plaintiff for incompetency, and the psychologist did not follow proper procedure; however, Lee accepted the examination report without medical

testing and dismissed the charges against Plaintiff without notifying Plaintiff, thus violating Plaintiff's due process rights and his right to own a firearm by allowing a ruling of incompetency. *Id.* Plaintiff states he has evidence that proves he was competent. *Id.* at 7. Plaintiff alleges Titus County acted under color of law to deprive Plaintiff of his civil rights "as an umbrella to the rights violations of its Law Enforcement Officer, Attorney & Judge against the plaintiff by creating a false sense of law & order, and abuse of process by the county court system." *Id.* at 5.

The events giving rise to Plaintiff's claim occurred in a house in Titus County and the Titus County Courthouse. *Id.* at 6. The approximate dates giving rise to Plaintiff's claim(s) are August 18, 2017 through May 20, 2019 and May 20, 2019 through July 24, 2023.[3] *Id.* For relief, Plaintiff seeks damages for the following: loss of earning capacity, loss of ability to trade or possess certain property (firearms & ammunition); loss of planned estate, loss of time & working years, liquidation of growing real estate investment, loss of opportunity and loss of wages, legal handicap, cruel and unusual punishment (time), and damage to reputation. *Id.* at 8.

Regarding his requested damages, Plaintiff specifically alleges as follows:

> It is requested that the court award damages in the amount of $2,500,000,000.00 + $1,750,000,000.00 for the loss of the plaintiff's firearm right at the beginning of the plaintiff's manufacturing career. The plaintiff is an engineer designer by trade. . . . The Reynolds name has at least 250 years of sporting & manufacturing experience with firearms. The largest firearm manufacturer in America started in 1949, 74 years ago. They built 1,581,717 firearms in 2018.
>
> Loss of opportunity - The plaintiff was not able to earn income because [sic] of the court proceedings and the loss of the plaintiff's civil rights for many years. The loss of income for those years is a direct impact to the planned estate of the plaintiff.
>
> One business, that was not funded because of the loss of opportunity, is a shipyard.

[3]There is no indication in the complaint that any events giving rise to Plaintiff's § 1983 claims arose within the second time frame of May 20, 2019 through July 24, 2023. Rather, those dates appear to relate to Plaintiff's claim for damages regarding alleged "time lost . . . from August 18, 2017 - July 24, 2023." *See* Dkt. No. 1 at 9.

The loss of the firearms business proceeds, directly affects the starting of the shipyard. Therefore, $600,000,000.00 is requested. My father worked at a shipyard, as a welder and repair person, in Alaska. The plaintiff's grandfather on his fathers side of the family was a Freemason, and maintenance [sic] person at a power plant in Titus county and owned real-estate in central Texas, that the Reynolds family purchased in 1884. Marine equipment contracts are very valuable.

Another business sector was Aerospace & Defense. No prototypes could be made to market the products since the firearms business was not able to start. Airplanes range from $100,000.00 - $200,000,000.000 to purchase new. Therefore, $36,000,000.00 is requested for the loss of the plaintiff's airplane business. And the risk associated with not starting on the right date. The plaintiff has a relative that retired from the Air Force.

The plaintiff's step-parent was or is employed at the Red River Army Depot and works around tanks and military vehicles and ordinance delivery systems. The plaintiff had an idea of building defense equipment for the military since his first visit to Red River Army Depot, at a younger age. Prototypes could not be built because of the loss of income from the loss of the plaintiff's firearm business. . . . Therefore, $150,000,000.00 is requested for the loss of the vehicle business, and $52,000,000.00 for the losses to the military aircraft business.

* * *

There are also losses to an intended import/export & staple product business, reliant on the proceeds of the firearms business. Losses in the amount of: Steel - $2,500,000,000.00, Aluminum - $1,000,000,000.00, Copper - $1,150,000,000.00, Plastic - $3,375,000,000.00, Grain - $21,250,000,000.00/year, Meat - $2,500,000,000.00/year.

The plaintiff had attempted to start his own business by a partnership with Big Tex Trailers, that was refused. The plaintiff had planned on starting the intended business regardless of an arrangement with Big Tex Trailers. The loss of the plaintiff's civil rights, blocked the plaintiff's ability to build prototypes for prospective customers and the business unit was put on hold until a later date. $90,000,000.00 is requested for the losses to the transportation division of the plaintiff's planned estate.

* * *

The accounting of the losses is considered to be true by the plaintiff. If the plaintiff started working at age 25 he would retire at age 65. Any time lost to the plaintiffs working years, requires the same consideration as actual time lost. In this case original time lost was from August 18, 2017 - July 24, 2023. Therefore, the same time is applied to the loss of the plaintiff's working years and the stated awards are

requested to increase by a factor of 2.5 for loss of time and reputation.

Total request for damages: $36,953,125,000.00 x 2.5 = $92,382,812,500.00

Id. at 9.

In Plaintiff's Motion for Interlocutory Order, which was filed several days after Plaintiff's complaint, Plaintiff requests the Court direct "defendant to pay an amount of $500.00 per month, while a decision is made regarding the requested award." Dkt. No. 6. According to Plaintiff, the "defendant harmed the plaintiff and is at fault for his loss of employment," and "payments are requested to support the plaintiff's living while the requested trial proceeds." *Id.*

Analysis

Courts are to liberally construe the pleadings of a *pro se* party, taking all well-pleaded allegations as true. *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993). "[A] *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). But "even a liberally-construed *pro se* ... complaint must set forth facts giving rise to a claim on which relief may be granted." *Levitt v. Univ. of Texas at El Paso*, 847 F.2d 221, 224 (5th Cir. 1988) (citing *Bounds v. Smith*, 430 U.S. 817, 825 (1977)). Thus, a court inquires "whether within the universe of theoretically provable facts there exists a set which can support a cause of action under [the] complaint, indulgently read." *Covington v. Cole*, 528 F.2d 1365, 1370 (5th Cir. 1976).

As noted above, under 28 U.S.C. § 1915(e)(2)(B), the court may dismiss claims filed by a party proceeding *in forma pauperis* who seeks redress from government entities or employees prior to service if the court determines that the claims are frivolous, malicious, or fail to state a claim upon

which relief may be granted. Pursuant to this provision, the court may review a complaint and dismiss *sua sponte* those claims premised on meritless legal theories and those that clearly lack any basis in fact. *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Broadly construed, Plaintiff appears to be alleging violations of his civil rights and consequently, is attempting to bring his claims under 42 U.S.C. § 1983. "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *Coleman v. United States*, No. A-14-CV-1015-LY, 2015 WL 1651478, at *5 (W.D. Tex. Apr. 14, 2015) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

Although Plaintiff repeatedly references civil rights violations in his complaint, no viable federal claim appears on the face of the complaint. To start, the United States Supreme Court has found that judges acting in the performance of their judicial duties are entitled to absolute immunity. *Edwards v. Pittman*, No. 4:23-CV-00942-O-BP, 2023 WL 6394407, at *2 (N.D. Tex. Sept. 14, 2023), *report and recommendation adopted sub nom.*, No. 4:23-CV-00942-O-BP, 2023 WL 6465138 (N.D. Tex. Oct. 2, 2023) (citing *Nixon v. Fitzgerald*, 457 U.S. 731, 745-46 (1982)). This absolute immunity applies to suits for damages resulting from any judicial act. *Id.* (citing *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)). Thus, absolute judicial immunity bars Plaintiff's claims against County Judge Brian Lee arising from actions that he took or declined to take in the course of his judicial duties.

Similarly, District Attorneys enjoy absolute prosecutorial immunity from civil suit for damages under § 1983 for his actions in initiating and pursuing a criminal prosecution through the

judicial process. *Hutchinson v. Fleischman*, No. CV 22-78, 2022 WL 4112234, at *4 (E.D. La. July 26, 2022), *report and recommendation adopted*, No. CV 22-78, 2022 WL 4104564 (E.D. La. Sept. 8, 2022) (citing *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) ("[A] state prosecuting attorney who acted within the scope of his duties in initiating and pursuing a criminal prosecution" was not subject to suit under § 1983); also citing *Brooks v. George Cnty.*, 84 F.3d 157, 168 (5th Cir. 1996) ("Actions which are related to the judicial process fulfill the prosecutor's advocatory function and are considered absolutely immune from suit")). Absolute immunity protects prosecutors from all liability even when they acted "maliciously, wantonly, or negligently." *Id.* (quoting *Loupe v. O'Bannon*, 824 F.3d 534, 539 (5th Cir. 2016) ("Absolute immunity shields prosecutors even when they act maliciously, wantonly, or negligently."); *Morrison v. City of Baton Rouge*, 761 F.2d 242, 248 (5th Cir. 1985)). County Attorney John Cobern is immune from suit under § 1983 for this reason.

Among his claims against Titus County and Titus County Sheriff's Office, Plaintiff alleges – without providing the date of his arrest(s) – that he was falsely arrested. The Court may raise the limitations or prescription issue *sua sponte* in its frivolousness review of a civil suit. *Id.* at *5 (citing *Wilke v. Meyer*, 345 Fed. Appx. 944, 945 (5th Cir. 2009); *Lopez-Vences v. Payne*, 74 Fed. Appx. 398 (5th Cir. 2003) (citing *Gartrell v. Gaylor*, 981 F.2d 254, 256 (5th Cir. 1993))). "'Dismissal is appropriate if it is clear from the face of the complaint that the claims asserted are barred by the applicable statute of limitations.'" *Id.* (quoting *Stanley v. Foster*, 464 F.3d 565, 568 (5th Cir. 2006)(quoting *Harris v. Hegmann*, 198 F.3d 153, 156 (5th Cir. 1999))).

For a § 1983 action, the court looks to the forum state's personal-injury limitations period. *Id.* (citing *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994)); *see also Nance v. Ward*, 142 S.

Ct. 2214, 2225 (2022) ("all § 1983 suits must be brought within a State's statute of limitations for personal-injury actions"). Claims alleging constitutional violations and brought pursuant to 42 U.S.C. § 1983 are subject to Texas's two-year statute of limitations for personal injury actions. *Mosley v. Hous. Cmty. Coll. Sys.*, 951 F. Supp. 1279, 1288 (S.D. Tex. 1996) (two-year statute of limitations in TEX. CIV. PRAC. & REM. CODE § 16.003 applies to § 1983 claim). Claims for false arrest accrue upon the arrest and run until "legal process was initiated against [the defendant]." *Wallace v. Kato*, 549 U.S. 384, 390 (2007); *see also id.* at 388 (clarifying that false arrest is a "species of [false imprisonment]").

In this case, as in *Hutchinson*, No. CV 22-78, 2022 WL 4112234 (E.D. La. July 26, 2022), *report and recommendation adopted*, No. CV 22-78, 2022 WL 4104564 (E.D. La. Sept. 8, 2022), the untimeliness is clear on the face of the pleadings. The approximate dates giving rise to Plaintiff's claim(s) are August 18, 2017 through May 20, 2019. Dkt. No. 1 at 6. The first specific date alleged by Plaintiff in his complaint is October 19, 2018, the date when Plaintiff allegedly received a court-appointed attorney in his misdemeanor case. In the absence of allegations to the contrary, Plaintiff was arrested sometime prior to that date, with any false arrest/imprisonment claim accruing when the court determined there was probable cause to arrest and prosecute him. *Hutchinso*n, 2022 WL 4112234, at *6. Plaintiff filed his complaint almost five years after October 19, 2018, which is after the limitations period ended for any § 1983 claims for false arrest or false imprisonment. Thus, Plaintiff's claims against Titus County and Titus County Sheriff's Office are time barred.

Finally, the Court notes Plaintiff's allegations of alleged injury (that Defendants' wrongful actions prevented Plaintiff from starting numerous business that would have been worth billions of dollars) are "untethered from both law and fact and are thus clearly meritless." *Barnes v. United*

States, 800 Fed. Appx. 284 (5th Cir. 2020). The Court has previously stated that a "plaintiff asserting fantastic or delusional claims should not, by payment of a filing fee, obtain a license to consume limited judicial resources and put defendants to effort and expense." *Tyler v. Carter*, 151 F.R.D. 537, 540 (S.D. N.Y. 1993) (*sua sponte* FED. R. CIV. P. 12(b)(6) dismissal). Here, Plaintiff's claims may be so characterized, as evidenced by the above discussion of Plaintiff's filings. Under § 1915(e)(2) and the applicable legal standards, even construing Plaintiff's complaint liberally and assuming jurisdiction, it appears to the Court that Plaintiff's claims are implausible, attenuated, unsubstantial, frivolous, and devoid of merit. *Richard-Coulibaly*, 2019 WL 3752672, at *2.

In short, Plaintiff offers no legal basis supporting any cause of action against Defendants. Plaintiff's claims fail to raise the right to relief above—or even to—a speculative level and should therefore be dismissed. Although the Court would ordinarily allow a *pro se* plaintiff to amend his complaint, given the allegations contained in this case, the Court finds it would be futile to allow Plaintiff to amend. *See Jones v. Greninger*, 188 F.3d 322, 326 (5th Cir. 1999) (a *pro se* complaint is properly dismissed when it would be futile to allow amendment). Nothing before the Court suggests that Plaintiff can meet the conditions to assert claims currently barred by limitations or immunity.

CONCLUSION

In accordance with the preceding discussion, the Court **GRANTS** Plaintiff *in forma pauperis* status. Service upon Defendants should be withheld pending the District Court's review of the recommendations made in this report. If the District Court declines to adopt the recommendations, then service should be issued at that time upon Defendants.

Having screened the complaint, the undersigned finds Plaintiff's claims are delusional, fail

to state a cause of action, and are frivolous under 28 U.S.C. § 1915(e). Accordingly, it is

RECOMMENDED that Plaintiff's above-referenced cause of action be **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e). The Clerk shall mail Plaintiff a copy of this Report and Recommendation by certified mail, return receipt requested.

Objections

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this the 10th day of October, 2023.

J. Boone Baxter
UNITED STATES MAGISTRATE JUDGE

United States Court of Appeals for the Fifth Circuit

No. 23-40700

JESSE A. REYNOLDS,

Plaintiff—Appellant,

versus

TITUS COUNTY; TITUS COUNTY SHERIFF'S OFFICE; BRIAN LEE, *Titus County Judge, Individually and in Official Capacity*; JOHN COBERN, *Titus County Attorney, Individually and in Official Capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:23-CV-99

ON PETITION FOR REHEARING EN BANC

Before DAVIS, HO, and RAMIREZ, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX C

Additional material from this filing is available in the Clerk's Office.