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In the Supreme Court of the United States

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Sedric Q. Sutton

*Petitioner, Pro Se*

vs.

State of Mississippi

*Respondent.*

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the  
Fifth Circuit

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals Fifth Circuit

No. 23-60393  
Summary Calendar

**FILED**  
January 5, 2024

Lyle W. Cayce  
Clerk

Sedric Q. Sutton,

*Plaintiff—Appellant,*

*versus*

Charlton Smith, *Deputy Sheriff of Washington County, Mississippi;*  
Dwight Donham, *Deputy Sheriff of Washington County, Mississippi;*  
Honorable Margaret Carey-McCray, *Circuit Court Judge of Washington*  
*County, Mississippi;* Lynn Fitch, *Attorney General of Mississippi,*

*Defendants—Appellees.*

Appeal from the United States District Court for  
the Northern District of Mississippi USDC  
No. 4:22-CV-114

Before Davis, Willett, and Oldham, *Circuit Judges.*

Per Curiam:\*

\* This opinion is not designated for publication. See 5th Cir. R. 47.5:

No. 23-60393

Plaintiff-Appellant, Sedric Q. Sutton, proceeding *pro se*, appeals the dismissal of his suit pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56(f)(3). We AFFIRM.

I.

Sutton alleges various constitutional and state-law violations against the Attorney General of Mississippi, Lynn Fitch, two Deputy Sheriffs of Washington County, Charlton Smith and Dwight Donham, and Circuit Court Judge of Washington County, Judge Margaret Carey-McCray.

Sutton's claims stem from underlying events that occurred in July 2014 when Defendants Smith and Donham obtained a search warrant for "stolen items" located at 331 Muscadine Street in Greenville, Mississippi.<sup>1</sup> During the execution of the warrant, law enforcement officers detained Sutton and found \$4,995 in cash, a handgun, two digital scales, and sixty pills of hydrocodone and acetaminophen.<sup>2</sup> Sutton was taken into custody and subsequently indicted by a grand jury on two counts: (1) possession of a controlled substance with intent to distribute and (2) possession of a firearm by a convicted felon.<sup>3</sup> After a jury trial, Sutton was convicted on the first count and sentenced as a habitual offender to fifteen years.<sup>4</sup>

Sutton appealed his conviction and sentence. In 2018, the Mississippi Supreme Court reversed and remanded Sutton's conviction after concluding that "[a]ll of the State's evidence in the case stemmed from an unconstitutional search pursuant to an invalid warrant which failed

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<sup>1</sup> *Sutton v. State (Sutton I)*, 238 So. 3d 1150, 1153 (Miss. 2018).

<sup>2</sup> *Id.* at 1153 & n.2.

<sup>3</sup> *Id.* at 1153-54.

<sup>4</sup> *Sutton v. State (Sutton II)*, 337 So. 3d 208, 209 (Miss. 2022).

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adequately to describe the property to be seized by the executing officers.”<sup>5</sup>  
On remand, the trial judge entered an order of nolle prosequi.<sup>6</sup>

Sutton subsequently filed a complaint for wrongful conviction and imprisonment under Mississippi Code Sections 11-44-1 to -15<sup>5</sup> in the Circuit Court of Washington County, Mississippi. The trial court granted the State’s motion for summary judgment after concluding that Sutton had not created a genuine issue of material fact that he did not commit the felony for which he was sentenced.<sup>6</sup> The Mississippi Supreme Court affirmed the trial court’s judgment, holding that Sutton’s conviction was reversed “based on legal insufficiency” and not on grounds “inconsistent with innocence.”<sup>7</sup> The Court additionally concluded that there was “no merit in Sutton’s argument that he possessed the hydrocodone pills for ongoing medical ailments [and thus] . . . did not commit a felony.”<sup>8</sup>

On July 26, 2022, Sutton filed the instant lawsuit in federal court, based on the same underlying events as his state-court lawsuit. Sutton alleges three causes of action in his complaint: (1) Deputy Sheriffs Smith and Donham violated his Fourth Amendment rights by conducting an illegal search and seizure pursuant to an invalid search warrant; (2) Judge Carey-

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<sup>5</sup> Mississippi Code Section 11-44-1 provides that “[i]n light of the particular and substantial horror of being imprisoned for a crime one did not commit, the Legislature intends by enactment of the provisions of this chapter that innocent people who are wrongfully convicted be able to receive monetary compensation.” Miss. Code Ann. § 11-44-1.

<sup>6</sup> *Sutton II*, 337 So. 3d at 210.

<sup>7</sup> *Id.* at 212-13.

<sup>8</sup> *Id.* at 213.

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<sup>5</sup> *Sutton I*, 239 So. 3d at 1153.<sup>6</sup> *Sutton II*, 337 So. 3d at 210.

McCray<sup>11</sup> and Attorney General Fitch denied him necessary medical treatment during his trial and incarceration in violation of his Eighth Amendment and due process rights under the Fourteenth Amendment; and (3) a claim against Attorney General Fitch for compensation under Mississippi's wrongful conviction and imprisonment statute. Sutton seeks \$999,999,999,999 in damages.

Defendants Judge Carey-McCray, Smith, and Donham moved to dismiss Sutton's claims. The district court<sup>9</sup> granted the motion and dismissed Sutton's claims against Smith and Donham, which arose in 2014, as time barred under Mississippi's three-year statute of limitations. The court additionally dismissed Sutton's claims against Judge Carey-McCray under the doctrine of judicial immunity. In its dismissal order, the district court gave Sutton and Attorney General Fitch notice, pursuant to Rule 56(f)(3),<sup>10</sup> of its "intent to consider summary judgment on the plaintiff's claim for cruel and unusual punishment and wrongful conviction against the State of Mississippi." After providing the parties with an opportunity to respond, the district court dismissed Sutton's remaining claims against Attorney General Fitch as barred by *res judicata* in light of Sutton's prior

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<sup>9</sup> Because the parties consented to have all proceedings, including entry of final judgment, conducted by a magistrate judge, we will refer to the judge as the district court. See 28 U.S.C. § 636(c).

<sup>10</sup> Rule 56(f) provides that after a district court gives notice and time for the parties to respond, it may "consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute." Fed. R. Civ. P. 56(f)(3).



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<sup>11</sup> As noted by the district court, although Sutton's complaint names Judge CareyMcCray as a defendant, it contains no factual allegations against her. Instead, the complaint makes allegations against "the court" and "the trial court," which the district court read as referring to Judge Carey-McCray given that she presided over Sutton's criminal trial.

wrongful conviction lawsuit that was dismissed with prejudice in state court, or alternatively as barred by the three-year statute of limitations.

Sutton filed a motion for reconsideration under Rule 59(e), which the district court denied. Sutton timely appealed.

## II.

Sutton appeals the district court's dismissal of his claims under Rules 12(b)(6) and 56(f)(3).<sup>11</sup> On appeal, he raises two issues. First, Sutton contends that the district court erred in dismissing his claims against Donham and Smith on the grounds that these officers should not be entitled to qualified immunity for executing an invalid search warrant. Second, Sutton asserts that he was wrongfully convicted of a felony—possession of a Schedule III controlled substance with intent to distribute—and instead his actions constituted a misdemeanor.

Sutton's arguments are unavailing. As an initial matter, Sutton's appellate brief does not contend the district court erred in dismissing his claims against Judge Carey-McCray. Therefore, these claims are deemed abandoned.<sup>12</sup> And although Sutton renews his Fourth Amendment and

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<sup>11</sup> We review *de novo* both the district court's grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6) and the grant of summary judgment under Rule 56(f)(3). See *White v. U.S. Corr., L.L.C.*, 996 F.3d 302, 306 (5th Cir. 2021) (motion to dismiss); *Bradley v. Sheriff's Dep't St. Landry Par.*, 958 F.3d 387, 390-91 (5th Cir. 2020) (summary judgment).

<sup>12</sup> See *Norris v. Causey*, 869 F.3d 360, 373 n.10 (5th Cir. 2017) (noting that "a failure to adequately brief an issue constitutes abandonment" (citing *Weaver v. Puckett*, 896 F.2d 126, 128 (5th Cir. 1990))); Fed. R. App. P. 28(a)(8)(A) (requiring an appellant's opening brief to contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies").

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statelaw wrongful conviction claims against the remaining Defendants, he does not challenge the district court's holdings that these claims are barred by *res*

*judicata* and the statute of limitations. Because Sutton neither addresses nor identifies any error in the judgments being appealed, it "is the same as if he had not appealed th[ose] judgment[s]." <sup>13</sup> Accordingly, we AFFIRM the district court's dismissal of Sutton's claims.

<sup>13</sup> *Brinkman v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *see also Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993) ("Although we liberally

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construe the briefs of pro se appellants, we also require that arguments must be briefed to be preserved.” (internal quotation marks and citation omitted)).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**SEDRIC Q. SUTTON**

**PLAINTIFF**

**V.**

**CIVIL CAUSE NO. 4:22-CV-114-DAS**

**LYNN FITCH, ATTORNEY GENERAL OF  
MISSISSIPPI, CHARLTON SMITH, DEPUTY SHERIFF  
OF WASHINGTON COUNTY, MISSISSIPPI,  
DWIGHT DONHAM, DEPUTY SHERIFF OF  
WASHINGTON COUNTY, MISSISSIPPI, HON.  
MARGARET CAREY-MCCRAY, CIRCUIT  
JUDGE OF WASHINGTON COUNTY, MISSISSIPPI**

**DEFENDANTS**

**ORDER AND MEMORANDUM OPINION**

On April 20, 2023, the court entered an Order and Memorandum Opinion granting Hon. Margaret Carey-McCray's and Charlton Smith and Dwight Donham's motions to dismiss and dismissing all of the plaintiff's claims against them. Docket 26. In addition, the court identified certain material facts that may not genuinely be in dispute and directed the remaining parties to submit briefing on whether the court should grant summary judgment and dismiss the remaining claims. After allowing 14 days to respond as required by Federal Rule of Civil Procedure 56(f)(3), the court is now prepared to rule.

*Procedural and Factual Background*<sup>1</sup>

On July 26, 2022, the plaintiff filed a *pro se* Complaint in the United States District Court for the Northern District of Mississippi against Lynn Fitch, Attorney General of Mississippi, the only remaining defendant in this action. The Complaint sets forth three claims which are identified by the plaintiff as follows: (1) Violation of Forth Amendment – Illegal Search and Seizure, (2) Violation of the Fourteenth Amendment Due Process Violations which resulted in

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<sup>1</sup> A more in-depth factual recitation can be found in the Court's Order and Memorandum Opinion [26].

the Eighth Amendment Cruel and Unusual Punishment, and (3) Entitlement to be Compensated for Wrongful Conviction under Mississippi Code Section 11-44-1 to -15. The plaintiff alleges that on or about July 15, 2013, Defendants Dwight Donham and Charlton Smith conducted an illegal search and seizure with a warrant that failed to “meet the unambiguous requirement of the Fourth Amendment in that a warrant must particularly describe the persons or things to be seized” and thus “deprived him of Due Process for confiscating property without a valid warrant.” The plaintiff claims his due process rights were violated resulting in cruel and unusual punishment when the trial court did not allow him to seek necessary medical treatment before trial or during his incarceration. The plaintiff claims he was wrongfully convicted for possession of a Schedule III controlled substance with intent to distribute, claiming his actions only amounted to a mere misdemeanor.

Defendants Charlton Smith, Dwight Donham, and Hon. Margaret Carey-McCray filed motions to dismiss the plaintiff’s Complaint which the court granted. In its Order and Memorandum Opinion, the court notified the plaintiff and Defendant Fitch that it intended to consider summary judgment on the remaining claims and gave the parties 14 days to file a response. Only the plaintiff responded. The issues are now ripe for review.

#### *Legal Standard*

The Court may “consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.” Fed. R. Civ. P. 56(f)(3). A court may grant summary judgment under Rule 56(f)(3) so long as it provides the parties with “ample notice [and] time to respond” and “consider[s] everything” that the parties claim to be probative of the matters that have been identified. *Santana v. Cook Co. Bd. of Review*, 679 F.3d 614, 619 (7th

Cir. 2012); *see also Wang v. Prudential Ins. Co. of Am.*, 439 Fed. Appx. 359, 363 n. 2 (5th Cir. 2011).

Summary judgment is warranted when the evidence reveals no genuine dispute regarding any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The rule “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The moving party “bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Id.* at 323. The nonmoving party must then “go beyond the pleadings” and “designate ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324 (citation omitted). In reviewing the evidence, factual controversies are to be resolved in favor of the non-movant, “but only when both parties have submitted evidence of contradictory facts.” *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (*en banc*). When such contradictory facts exist, the court may “not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). Conclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments are not an adequate substitute for specific facts showing a genuine issue for trial. *TIG Ins. Co. v. Sedgwick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1997); *Little*, 37 F.3d at 1075.

*Discussion*

In its Order and Memorandum Opinion, the court stated it intended to consider summary judgment on the plaintiff's claims for cruel and unusual punishment and wrongful conviction against the State of Mississippi on the basis of res judicata. The plaintiff's response focuses on what he contends are errors committed by the trial court and maintains that his state court action for wrongful conviction and imprisonment was erroneously dismissed on summary judgment. His response states, "[my] claim of Cruel and Unusual Punishment is of a Sensitive Nature: and preferred to be discussed in private. This matter should be sent to the jury to decide." The plaintiff concludes "there are genuine issues of material fact regarding [his] Innocence of the offense for which he was convicted and sentenced."

"Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Res judicata "insures the finality of judgments and thereby conserves judicial resources and protects litigants from multiple lawsuits." *United States v. Shanbaum*, 10 F.3d 305, 310 (5th Cir. 1994). Res judicata prevents a later suit, such as this one, from collaterally attacking a prior judgment by a court of competent jurisdiction. *See In the Matter of Williams*, 298 F.3d 458, 461 (5th Cir. 2002) (prior final order cannot be collaterally attacked).

In order for a claim to be barred by res judicata, four elements must be met: "(1) the parties must be identical in the two actions; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same claim or cause of action must be involved in both cases." *In re Ark-La-Tex Timber Co.*, 482 F.3d 319, 330 (5th Cir. 2007).

All four elements of res judicata are satisfied, barring the plaintiff's claims for wrongful conviction against Defendant Fitch. The plaintiff previously filed a complaint for wrongful conviction and imprisonment against the State of Mississippi in the Circuit Court of Washington County, Mississippi. *Sutton v. State*, 337 So. 3d 208, 210 (Miss.). The trial court dismissed the plaintiff's claims on the basis that he "failed to create a genuine issue of material fact by a preponderance of the evidence that he did not commit the felon[y] for which he was sentenced or the acts or omissions for which he was sentenced did not constitute a felony." *Id.* In a February 3, 2022 opinion, the Mississippi Supreme Court upheld the trial court's decision finding the plaintiff's conviction was reversed on insufficient language in the search warrant and not on grounds not inconsistent with innocence, and the plaintiff failed to present sufficient evidence that his actions constituted a misdemeanor rather than a felony. *Id.* at 213. Whether the plaintiff was entitled to compensation under Mississippi Code Annotated § 11-44-1 to -15 was litigated in *Sutton v. State*, 337 So.3d 208 (2022) and cannot be re-litigated here.

To the extent that the plaintiff is alleging claims against the State for cruel and unusual punishment during his incarceration,<sup>2</sup> this claim is barred under the doctrine of res judicata for the plaintiff's failure to assert this claim in his prior suit for wrongful conviction and is alternatively barred by the statute of limitations. The plaintiff contends he "was poorly advised by his pro bono attorney," who "failed to allege the constitutional violation against Sutton and abandoned the case after filing only for Wrongful Conviction." Regardless of counsel's supposed

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<sup>2</sup> The plaintiff's Complaint only briefly and somewhat ambiguously references his treatment during his incarceration:

[T]he Court was negligent in not allowing Sutton to seek treatment on his own, and negligent and total in not making sure Sutton received the needed treatment under the State's supervision and care while Sutton was incarcerated 2 years of a 15 year sentence; they failed to inquire about the findings, and failed to act on the medical condition, to diagnose and give treatment, showing total disregard for his health. All while incarcerated, he never received treatment, and the Defendant failed to ensure I received adequate and necessary treatment.

Docket 1 at 6.



failure to allege those constitutional violations, all claims which have been litigated in a prior suit, as well as all claims which should have been litigated in the prior suit, are barred from re-litigation under the doctrine of res judicata. *Johnson v. Howell*, 592 So.2d 998, 1002 (Miss. 1991). “Where one has a choice of more than one theory of recovery for a given wrong, she may not assert them serially in successive actions but must advance all at once on pain of the bar of res judicata.” *Walton v. Bourgeois*, 512 So.2d 698, 702 (Miss. 1987).

With respect to the statute of limitations on a claim for cruel and unusual punishment, there is no federal statute of limitations for civil rights actions. *See Owens v. Okure*, 488 U.S. 235, 249–50 (1989) (holding that a federal court must borrow the forum state's general personal injury limitations period since there is no federal statute of limitations for civil rights actions brought pursuant to 42 U.S.C. § 1983). Therefore, this court must borrow the general personal injury limitations period for Mississippi and apply it to such a claim. *Id.* The applicable Mississippi statute of limitations period is three years. *See Gates v. Walker*, 865 F.Supp. 1222, 1230 (S.D. Miss. 1994), *aff'd*, 62 F.3d 394 (5th Cir. 1995); *see also* Miss. Code Ann. § 15–1–49.

“Under federal law, the statute of limitations for § 1983 claims begins to run ‘the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured.’” *Edmonds v. Oktibbeha County, Miss.*, 675 F.3d 911, 916 (5th Cir. 2012) (quoting *Helton v. Clements*, 832 F.2d 332, 335 (5th Cir. 1987)). A plaintiff's awareness consists of two components: (1) the existence of the injury; and (2) causation, meaning a connection between the injury and a defendant's conduct. *See Stewart v. Parish of Jefferson*, 951 F.2d 681, 684 (5th Cir.), *cert. denied*, 506 U.S. 820 (1982).

Under this standard, any claim for cruel and unusual punishment during the plaintiff's incarceration accrued at the latest by March 15, 2018, when the Mississippi Supreme Court

reversed the plaintiff's conviction and vacated his sentence. *See Sutton v. State*, 238 So. 3d 1150, 1160-61 (Miss. 2018). The instant action was filed on July 26, 2022, and, therefore, any claim for cruel and unusual punishment during the plaintiff's incarceration are time barred and dismissal is proper.

*Conclusion*

For all the reasons discussed above, the court grants summary judgment on the plaintiff's claims against Defendant Lynn Fitch, Attorney General of Mississippi, under Rule 56(f)(3). The plaintiff's claims for cruel and unusual punishment and wrongful conviction are dismissed *with prejudice*. This case is closed.

This the 26th day of June, 2023.

/s/ David A. Sanders

UNITED STATES MAGISTRATE JUDGE

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