No. 24-6564

ORIGINAL

FILED
NOV 26 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Kenneth Johnson — PETITIONER
(Your Name)

vs.

Seagrave Compress - Trinity Company — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

united State Courts of Appeals 5th Circuit New Orleans Louisiana 70130-3409
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kenneth Johnson
(Your Name)

1207 Ave G Street / P.O Box 1171
(Address)

Seagrave Tx 79359
(City, State, Zip Code)

806-535-3411
(Phone Number)

QUESTION(S) PRESENTED

~~While I was in his present~~

While I WAS iN The presence of the manager Junior Hernandez He used the -N- word. Without regards to person of color that was ~~there~~ there at that time.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

1

Case # 24-10425
Filed 9/9/2024

STATUTES AND RULES Ending Date To File
Complaint Filed 9-7-2023
Physically Filed 3 days prior To End Date
Required
Mail Received By Judge after End Date
Required in which Judge accept Date on mail
verses Date I physicall filed.

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

[X] reported at United States District Court; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Septembe 9, 2024.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ~~Sept. 7, 2023~~ April 12, 2024 KJ.
A copy of that decision appears at Appendix I.

[ ] A timely petition for rehearing was thereafter denied on the following date: Sept 7 2024, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Labor Code

TITLE 2. protection OF LABORERS

SUBTITLE A. EMPloyment DiSCRiMiNATiON

ChAPteR 21. EMPloyment DiSCRiMiNATion

Sec. 21.056 Aiding or Abetting Discrimination
" Using the "N" word ~~to~~ while ~~a~~ AN AFRIcan Amelican present.

Sec 21.059 (1) indicates a preference, limitation specification, or discrimation based on race, color disability, religion, sex, national origin, or age.

STATEMENT OF THE CASE

Im Filing A Civil Law suit against
the SEAGRAVE Compressl trinity Company
For Racial Slurs, Hostile INVIROMENT + DISCRIMINATION

REASONS FOR GRANTING THE PETITION

District Court, Jolly, Higginson, Circuit Judges dismissal of my complaint.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth Johnson

Date: 11-26-2024

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 9, 2024
Lyle W. Cayce
Clerk

No. 24-10425
Summary Calendar

KENNETH JOHNSON,

Plaintiff—Appellant,

versus

SEAGRAVES COMPRESS, TRINITY COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:23-CV-209

Before JOLLY, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Kenneth Johnson, proceeding *pro se* and *in forma pauperis*, appeals the district court's dismissal of his complaint in which he alleged that he was wrongfully terminated and discriminated against on the basis of his race. The district court noted that Johnson's original complaint was deficient because he failed to file his lawsuit within ninety days of receiving his right to sue

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

letter from the EEOC. *See Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379 (5th Cir. 2002). The district court then gave Johnson an opportunity to amend his complaint. Johnson filed an amended complaint, but he failed to explain or excuse the untimeliness. The district court then dismissed Johnson's complaint. Johnson has appealed.

On appeal, Johnson does not challenge the district court's finding that his complaint is untimely; he merely restates the facts in his complaint. The facts show that his complaint is untimely: the EEOC issued Johnson a right to sue letter dated September 29, 2022, which Johnson alleged was postmarked May 9, 2023. Johnson did not state when he received the letter, so the district court assumed that he received the letter at the most seven days later than the postmark, on May 16, 2023. *See id.* at 379–80. Johnson had ninety days from that date to file his lawsuit. But he did not file this lawsuit until 114 days later, on September 7, 2023. Thus, his complaint is barred because it is untimely. Accordingly, the judgment of the district court dismissing the complaint is, in all respects,

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

KENNETH JOHNSON,

Plaintiff,

v.

SEAGRAVE COMPRESS – TRINITY COMPANY,

Defendant.

No. 5:23-CV-209-H-BQ

ORDER OVERRULING OBJECTIONS AND ADOPTING THE FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Before the Court are the Findings, Conclusions, and Recommendation (FCR) of Magistrate Judge D. Gordon Bryant (Dkt. No. 8) and the objections filed by the plaintiff, Kenneth Johnson (Dkt. Nos. 9–10). The FCR recommends that the Court dismiss the plaintiff's claims with prejudice because they are untimely. Dkt. No. 8. The plaintiff's objections argue that his claims were timely filed and that the case should proceed due to "new evidence being submitted." Dkt. No. 9. However, the plaintiff's claim is still untimely, and his new evidence cannot overcome this obstacle. Thus, the Court overrules the plaintiff's objections, accepts and adopts the FCR in full, and dismisses the plaintiff's claims with prejudice as untimely.

1. Factual and Procedural History

The plaintiff filed a complaint on September 7, 2023, asserting claims of race discrimination in violation of Title VII. Dkt. Nos. 1; 1-1. Magistrate Judge Bryant issued an FCR recommending that the plaintiff's claims be dismissed for failure to state a claim, pursuant to judicial screening under 28 U.S.C. § 1915(e)(2). Dkt. No. 8. The FCR found that the suit was not filed within 90 days of the presumed date the plaintiff received his

EEOC right-to-sue letter, which was issued September 29, 2022, and thus is time-barred. *Id.* at 4–5. However, the FCR allowed the plaintiff to file an amended complaint with facts demonstrating that he timely filed suit or that the limitations period should be equitably tolled. *Id.* at 5–6.

The plaintiff filed timely objections. Dkt. Nos. 9–10. The plaintiff asserts that "the actual envevelope [sic] that has [the] Determination and Notice of Right's . . . is dated May–9–2022 [sic]." Dkt. No. 9 at 1. The plaintiff attached the envelope, which bears postage dated May 9, 2023. *Id.* at 5. The plaintiff also argues that the Court should "proceed with [the] case do [sic] to new evidence being submitted" and provided "a flash drive with evidence prooving [sic] that the N word was said by Junior Hernandez Seagrave Compress manager." *Id.* at 1–2; Dkt. No. 10. The flash drive contains an audio recording of a conversation between two unidentified persons regarding machinery, which included the statement, "It wasn't a phrasing on you, it was used as to the machine, but, just because, N-word, he's done so much leading up to it, it's his own fault." Dkt. No. 10 at 0:18–0:30. It also contains a response letter from the defendant to the EEOC. *See* Dkt. No. 10.

2. Standard of Review

When a party timely objects to a magistrate judge's FCR, the district court must review the objected-to portions de novo. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The district court may then accept, reject, or modify the magistrate judge's findings and recommendations, in whole or in part. 28 U.S.C. § 636(b)(1). Objections to the FCR must be "specific"; they must "put the district court on notice of the urged error." *Williams v. K&B Equip. Co.*, 724 F.2d 508, 511 (5th Cir. 1984). "[A]n objection must identify the specific finding or recommendation to which objection is made, state the basis for the

objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found." *Thompson v. Bumpas*, No. 4:22-cv-0640-P, 2022 WL 17585271, at *1 (N.D. Tex. Dec. 12, 2022) (citing *United States v. Mathis*, 458 F. Supp. 3d 559, 564 (E.D. Tex. 2020)). However, the Court need not consider "[f]rivolous, conclusive[,] or general objections." *Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987) (quotation omitted). In such cases, the Court reviews the FCR only for plain error. *Serrano v. Customs & Border Patrol, U.S. Customs & Border Prot.*, 975 F.3d 488, 502 (5th Cir. 2020).

In addition, the Court has discretion over whether to consider evidence proffered after an FCR has been issued. *See Trench Tech Int'l, Inc. v. Tech Con Trenching, Inc.*, No. 4:19-cv-201-O, 2022 WL 17986244, at *2 (N.D. Tex. Dec. 29, 2022) (citing *Performance Autoplex II Ltd. v. Mid-Continent Cas. Co.*, 322 F.3d 847, 862 (5th Cir. 2003)). Courts consider the following factors:

> (1) the moving party's reasons for not originally submitting the evidence; (2) the importance of the omitted evidence to the moving party's case; (3) whether the evidence was previously available to the non-moving party; and (4) the likelihood of unfair prejudice to the non-moving party if the evidence is accepted.

Id. (citing *Performance Autoplex II Ltd.*, 322 F.3d at 862).

3. Analysis

As an initial matter, the Court will consider both the envelope and the flash drive. As to the first factor, the plaintiff has provided no explanation as to why he did not submit this evidence earlier. However, Judge Bryant's prior Order only directed the plaintiff to allege whether he had received a right-to-sue letter, not the date he received it. *See* Dkt. No. 6 at 2. Thus, the plaintiff likely did not know to submit the envelope earlier. Second, the

date on the envelope is important with regard to the timeliness of the suit, and the recording would be important to the claims themselves. And the third and fourth factors are not relevant here—because this case is subject to judicial screening, the other party is not present and is not prejudiced. *See* Dkt. No. 5. Finally, the envelope is at least partially responsive to the FCR's option of filing an amended complaint showing the suit was timely. *See* Dkt. No. 8 at 5–6. Thus, the Court will exercise its discretion to consider the evidence.

However, even considering the evidence offered by the plaintiff, his suit must be dismissed as untimely. Under Title VII, a plaintiff must "file[] a timely charge with the EEOC and receive[] a statutory notice of right to sue" before suing in federal court. *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378–79 (5th Cir. 2002); 42 U.S.C. § 2000e-5(f)(1). A plaintiff must file his civil action within 90 days after he receives that notice. *Taylor*, 296 F.3d at 379; 42 U.S.C. § 2000e-5(f)(1). This limitation period is "strictly construed" and "is a precondition to filing suit in district court." *Taylor*, 296 F.3d at 379 (quotation omitted). If "the date on which a right-to-sue letter was actually received is either unknown or disputed, courts have presumed various receipt dates ranging from three to seven days after the letter was mailed." *Id.*

Here, the plaintiff has not alleged the date on which he received the right-to-sue letter. *See generally* Dkt. Nos. 1; 7; 9. However, the envelope from the EEOC is dated May 9, 2023. Dkt. No. 9 at 5. Applying the maximum number of days, the presumption arises that the plaintiff received the right-to-sue letter on or before May 16, 2023. *See Taylor*, 296 F.3d at 380. But the plaintiff filed this suit on September 7, 2023—114 days after the presumed date when he received the letter. *See* Dkt. No. 1. Thus, his suit is still untimely, and the Court overrules this objection.

As the FCR noted, the 90-day limitation period may be equitably tolled based on three potential grounds: "(1) the pendency of a suit between the same parties in the wrong forum; (2) the plaintiff's lack of awareness of the facts supporting his claim because of the defendant's intentional concealment of them; and (3) the EEOC's misleading the plaintiff about his rights." *Stokes v. Dolgencorp, Inc.*, 367 F. App'x 545, 548 (5th Cir. 2010) (citing *Manning v. Chevron Chem. Co.*, 332 F.3d 874, 880 (5th Cir. 2003)); Dkt. No. 8 at 5 n.3. The third ground applies if "an employee seeks information from the EEOC, and the organization gives the individual *incorrect information* that leads the individual to file an untimely charge." *Manning*, 332 F.3d at 881 (emphasis in original). The plaintiff does not object to the FCR's conclusion that he has not pled facts showing that the 90-day period should be equitably tolled. *See* Dkt. Nos. 8 at 5 n.3; 9. Nor do his objections allege any facts to support equitable tolling. *See* Dkt. No. 9. The plaintiff claims he left several messages for EEOC officials and spoke with one, but this occurred in March 2024, after he had already filed his untimely suit. *Compare* Dkt. No. 1, *with* Dkt. No. 9 at 2–3. And the plaintiff does not claim that the EEOC provided him with incorrect information. *See* Dkt. No. 9 at 2–3. Thus, the Court finds that equitable tolling does not apply, and the plaintiff's claims are time-barred.

Finally, the plaintiff's objection of "new evidence," including the flash drive, is not a specific objection to a finding or recommendation in the FCR. *See Thompson*, 2022 WL 17585271, at *1. Instead, it is a general objection that the suit should proceed despite its untimeliness. However, the plaintiff may not dodge the "precondition" of timely filing his Title VII suit. *See Taylor*, 296 F.3d at 379. Accordingly, the Court has reviewed the rest of the FCR for plain error. Finding none, it overrules this objection.

4. Conclusion

Having reviewed the objected-to portions of the FCR de novo and the remainder for plain error, the Court overrules the plaintiff's objections, and it accepts and adopts the FCR (Dkt. No. 8) in full. The plaintiff's claims are untimely and thus are dismissed with prejudice for failure to state a claim, pursuant to 28 U.S.C. § 1915. The Court will enter judgment in accordance with Federal Rule of Civil Procedure 58 in a separate document.

So ordered on April 12, 2024.

JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

KENNETH JOHNSON,	§	
	§	
Plaintiff,	§	
	§	
v.	§	No. 5:23-CV-209-H-BQ
	§	
SEAGRAVE COMPRESS – TRINITY COMPANY,	§	
	§	
Defendant.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Proceeding pro se and *in forma pauperis*, Kenneth Johnson filed this action under Title VII, alleging that his employer fired him because of his race. Compl. 1, ECF No. 1; *see* Civil Cover Sheet, ECF No. 1 (stating that he is filing suit under Title VII).[1] Under Special Order No. 3-251, this case was automatically referred to the undersigned United States Magistrate Judge for further proceedings. ECF No. 3.

Not all parties have consented to proceed before the undersigned magistrate judge. Accordingly, the undersigned, considering both the Original and Supplemental Complaint, makes the following findings, conclusions, and recommendations to the United States District Judge. Because Johnson did not file suit within 90 days of receiving his determination letter from the Equal Employment Opportunity Commission (EEOC), the undersigned recommends the district judge **DISMISS with prejudice** Johnson's claims as untimely. Alternatively, if Johnson amends his Complaint within the fourteen-day objection period, pleading facts demonstrating he timely

[1] Page citations to Johnson's pleadings refer to the electronic page number assigned by the Court's electronic filing system.

filed suit within the 90-day limitations period or via equitable tolling, the undersigned recommends the district judge order Defendant Seagrave Compress-Trinity Company to answer.

I. Background

Johnson filed his Original Complaint on September 7, 2023. ECF No. 1. The undersigned subsequently granted Johnson's Application to Proceed *in Forma Pauperis* (IFP). ECF Nos. 2, 5. Because the Court granted Johnson permission to proceed IFP, "[s]ervice of process [was] . . . withheld pending judicial screening pursuant to 28 U.S.C. § 1915(e)(2)." ECF No. 5, at 1. On October 6, 2023, the Court entered an order requiring Johnson to file an amended complaint including the following information: "(1) the date he was fired; (2) whether he filed a claim with the EEOC or [Texas Workforce Commission (TWC)] and, if so, when that claim was filed; and (3) whether he received a right-to-sue letter from one of those agencies." ECF No. 6, at 2 (explaining that "Johnson ha[d] not pleaded any facts showing that he exhausted his administrative remedies by filing an action with and receiving a right-to-sue letter from the" EEOC or TWC).

In response, Johnson filed what is docketed as his Supplemental Complaint. ECF No. 7. In Johnson's Supplemental Complaint, he did not plead additional relevant facts but did attach: (1) a notice from his employer, Seagrave Compress-Trinity Company (Trinity), concerning his health care coverage status and referencing his employment termination date—February 7, 2022; (2) a completed TWC form alleging various forms of discrimination and retaliation by Trinity against Johnson; and (3) a September 29, 2022 letter from the EEOC notifying Johnson of its determination of the charge and his right to sue within 90 days. *Id.*

II. 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] 28 U.S.C. § 1915(e)(2)(B)(i)–(iii); *see Newsome v. E.E.O.C.*, 301 F.3d 227, 231–33 (5th Cir. 2002) (per curiam) (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. *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. *See id.* at 327. A complaint fails to state a claim upon which relief may be granted when it fails to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *accord Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In evaluating the sufficiency of a complaint, courts accept well-pleaded factual allegations as true, but do not credit conclusory allegations or assertions that merely restate the legal elements of a claim. *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016) (per curiam). And while courts hold pro se plaintiffs to a more lenient standard than lawyers when analyzing complaints, such plaintiffs must nevertheless plead factual allegations that raise the right to relief above a speculative level. *Id.* (citing *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002)).

III. Discussion

"Although filing of an EEOC charge is not a jurisdictional prerequisite, it 'is a precondition to filing suit in district court.'" *Taylor*, 296 F.3d at 379 (quoting *Dao v. Auchan Hypermarket*, 96 F.3d 787, 789 (5th Cir. 1996) (per curiam)). Under "Title VII, a plaintiff has 90 days to file suit

[2] Johnson 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 Johnson sought and was granted leave to proceed IFP, however, his complaint is nevertheless subject to screening under 28 U.S.C. § 1915(e)(2).

in federal court after [he] receives the EEOC's right-to-sue letter." *Wright v. Arlington Indep. Sch. Dist.*, 834 F. App'x 897, 901 (5th Cir. 2020) (per curiam) (citations omitted); *see* 42 U.S.C. § 2000e-5(f)(1). The 90-day period is triggered when the plaintiff receives the right-to-sue letter. *See Hunter-Reed v. City of Houston*, 244 F. Supp. 2d 733, 740 (S.D. Tex. 2003) ("[T]he ninety-day period [begins] on the date that notice is received at the address supplied to the EEOC by the claimant." (internal quotation marks and citations omitted)). Any claims brought outside the 90-day limitations period should be dismissed. *Prewitt v. Cont'l Auto.*, 927 F. Supp. 2d 435, 445 (W.D. Tex. 2013); *see Duron v. Albertson's LLC*, 560 F.3d 288, 290 (5th Cir. 2009) (per curiam) ("The ninety-day window is strictly construed . . . ." (internal quotation marks and citation omitted)).

Johnson has not alleged when he received the right-to-sue letter. Instead, he merely attached the letter, which only states the date it was issued—September 29, 2022. Suppl. Compl. 5, ECF No. 7. "When the plaintiff does not assert that [he] received [his] notice on a specific date, [the Court] may presume that [he] received it between three and seven days after it was mailed." *Stokes v. Dolgencorp, Inc.*, 367 F. App'x 545, 547–48 (5th Cir. 2010) (per curiam) (quoting *Taylor*, 296 F.3d at 379). The Court may also "presume that the date of issuance is the date of mailing." *Id.* at 548 (citations omitted). Because Johnson's letter was issued on September 29, 2022, the Court concludes as a matter of law that he received it at the latest by October 6, 2022—seven days after the issuance date. As such, he was required to file his suit in federal court by January 4, 2023. *See Taylor*, 296 F.3d at 380 ("apply[ing] the maximum number of days that courts have allowed under the presumption of receipt doctrine, i.e., seven days after the EEOC mailed the letter" and determining plaintiff did not file within 90 days (cleaned up)). He did not, however, file the instant action until September 7, 2023—more than eight months later.

Because Johnson did not file his suit in federal court within 90 days of receiving his EEOC right-to-sue letter, his claims are untimely and should be dismissed.[3] *Id.* (affirming dismissal of plaintiff's case for failure to state a claim because his claims were time-barred); *see Escobar v. City of Del Rio*, No. DR-20-CV-0031-AM, 2023 WL 6465132, at *4–5 (W.D. Tex. Oct. 2, 2023) (affirming magistrate judge's conclusion that plaintiff's suit was untimely, where she filed it ninety-one days after receiving her EEOC letter); *Taylor v. Lear Corp.*, No. 3:16-CV-3341-D, 2017 WL 6209031, at *3–4 (N.D. Tex. Dec. 8, 2017) (granting defendant's motion to dismiss, where plaintiff filed suit approximately 240 days after receiving the EEOC right to sue letter); *see also Searcy v. Crowley Indep. Sch. Dist.*, No. 23-10776, 2023 WL 6393901, at *1 (5th Cir. Oct. 2, 2023) (affirming dismissal of plaintiff's Title VII claims under § 1915(e)(2)(B) for failure to state a claim because she did not exhaust administrative remedies). The undersigned therefore recommends the district judge dismiss Johnson's Title VII claims as time barred.

IV. Recommendation

For these reasons, the undersigned recommends that the United States District Court dismiss with prejudice Johnson's Complaint and all claims alleged therein for failure to state a claim in accordance with 28 U.S.C. § 1915. Johnson has not alleged facts showing that he timely filed his Complaint or that some basis exists for equitably tolling the limitations period, e.g., the pendency of the same suit in the wrong forum or the EEOC misleading Johnson about his rights. Johnson may—within the fourteen-day objection period—file an amended complaint setting forth any factual allegations he believes demonstrate grounds for the Court to conclude he timely filed

[3] The Fifth Circuit has observed there are three possible grounds for equitably tolling the 90-day period: "(1) the pendency of a suit between the same parties in the wrong forum; (2) the plaintiff's lack of awareness of the facts supporting his claim because of the defendant's intentional concealment of them; and (3) the EEOC's misleading the plaintiff about his rights." *Stokes*, 367 F. App'x at 548 (citation omitted). Johnson has not pleaded facts showing, much less argued, that the 90-day period should be equitably tolled. Compl. 1; Suppl. Compl. 1–5.

this suit or that the limitations period should be equitably tolled. If Johnson cures this defect, the undersigned recommends that the district judge order Trinity to answer.

V. Right to Object

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1) (2016); FED. R. CIV. P. 72(b). To be specific, an objection must identify the specific finding, conclusion, or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's Findings, Conclusions, and Recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

Dated: March 5, 2024.

D. GORDON BRYANT, JR.
UNITED STATES MAGISTRATE JUDGE

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