

Case No. 19-6434

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ORDER

REGINALD CHARLES HARVEY

Plaintiff - Appellant

v.

STATE OF TENNESSEE; OFFICER MARK BENDER, Badge #930; OFFICER ALEXANDER EGO; OFFICER JANE DOE; INVESTIGATOR JOHN DOE #1, Chattanooga Police Department; ASSISTANT DISTRICT ATTORNEY AMANDA MORRIS; GENERAL SESSION CRIMINAL COURT; INVESTIGATOR JOHN DOE #2, Chattanooga Police Department; OFFICER [UNKNOWN] WISE, Badge # 1690

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation:

The proper fee was not paid by November 10, 2020,

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**
Deborah S. Hunt, Clerk



Issued: January 08, 2021

APPENDIX - AG

No. 19-6434

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 27, 2020
DEBORAH S. HUNT, Clerk

REGINALD CHARLES HARVEY,

Plaintiff-Appellant,

v.

STATE OF TENNESSEE, et al.,

Defendants-Appellees.

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ORDER

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

Reginald Charles Harvey, a Georgia prisoner proceeding pro se, petitions this court to rehear its June 18, 2020, order denying his motion to proceed in forma pauperis on appeal from a district court judgment dismissing his civil rights complaint filed pursuant to 42 U.S.C. § 1983. He also moves for appointment of counsel.

Harvey's petition does not show that the court overlooked or misapprehended any point of law or fact. *See* Fed. R. App. P. 40(a)(2). Accordingly, the petition for rehearing and motion for appointment of counsel are **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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obstruction of service of process, criminal impersonation, and aggravated criminal trespass. All charges were dismissed on August 23, 2016.

Harvey alleged that the defendants conspired to violate his civil and constitutional rights, in violation of 18 U.S.C. § 241; deprived him of his civil and constitutional rights in violation of 18 U.S.C. § 242; violated Uniform Commercial Code 3-505 and 3-401; violated his rights under 42 U.S.C. §§ 1982, 1983, and 1986; and violated his Fourth, Fifth, and Fourteenth Amendment rights. Harvey also alleged claims for false arrest, false imprisonment, kidnapping, illegal search and seizure, excessive force, and assault and battery. He sought monetary and injunctive relief.

On initial screening, the district court concluded that the complaint was time-barred and sua sponte dismissed it under 28 U.S.C. § 1915(e)(2)(B) and 1915A for failure to state a claim on which relief may be granted. The district court reasoned that a one-year statute of limitations applies to § 1983 actions brought in Tennessee; that the incident about which Harvey complained occurred on October 29, 2015, when he was arrested and allegedly subjected to an illegal search and seizure and other alleged civil rights and constitutional violations; that “[t]he latest date on which the statute of limitations” for Harvey’s claims could have begun to run was August 23, 2016, when the criminal charges lodged against him as a result of the October 29, 2015, incident were dismissed; and that his October 18, 2017, complaint was untimely because it was filed more than one year after the criminal charges were dismissed. Harvey filed a motion for reconsideration, which the district court construed as a Federal Rule of Civil Procedure 59(e) motion to alter or amend the judgment and denied. Harvey filed a timely appeal.

This court may grant a motion to proceed in forma pauperis if it determines that an appeal would be taken in good faith and the movant is indigent. See *Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). A frivolous appeal, one that “lacks an arguable basis either in law or in fact,” would not be taken in good faith. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); see also *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

Although Harvey based his claims on various sources of law, all of his claims essentially alleged violations of his civil and constitutional rights and must be construed as falling under

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§ 1983. For § 1983 actions, federal courts apply the state personal-injury statute of limitations. *Wallace v. Kato*, 549 U.S. 384, 387 (2007). The appropriate statute of limitations for personal-injury actions arising in Tennessee and “brought under the federal civil rights statutes” is one year. Tenn. Code Ann. § 28-3-104(a)(1)(B); *Johnson v. Memphis Light Gas & Water Div.*, 777 F.3d 838, 843 (6th Cir. 2015) (discussing former version of Tennessee statute). The statute of limitations “starts to run when the plaintiff knows or has reason to know of the injury which is the basis of his action.” *Eidson v. Tenn. Dep’t of Children’s Servs.*, 510 F.3d 631, 635 (6th Cir. 2007) (citation omitted).

For the reasons stated by the district court, Harvey’s § 1983 complaint is time-barred by the applicable one-year statute of limitations. Because Harvey’s complaint is untimely, an appeal in this case would be frivolous. *See Neitzke*, 490 U.S. at 325.

Accordingly, the motion to proceed in forma pauperis is **DENIED**. Unless Harvey pays the \$505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

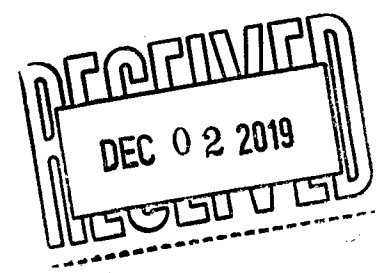
ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA



REGINALD CHARLES HARVEY,

Plaintiff,

v.

STATE OF TENNESSEE, MARK
BENDER, P. EGO, JANE DOE, JOHN
DOE #1, AMANDA MORRIS,
GENERAL SESSIONS CRIMINAL
COURT, JOHN DOE #2, AND OFFICER
WISE,

Defendants.

No. 1:17-CV-297-CLC-CHS

MEMORANDUM & ORDER

On October 9, 2019, the Court dismissed this pro se prisoner's civil rights action filed pursuant to § 1983 as time-barred [Docs. 32 and 33]. In doing so, the Court noted that a one-year statute of limitations applied to Plaintiff's claims, that the latest date on which any of Plaintiff's claims accrued was August 23, 2016, and that as Plaintiff had not filed his claims until October 18, 2017, they were clearly time-barred, and the Court therefore denied Petitioner's pending motions as moot [Doc. 32 pp. 2-3; Doc. 33].

Plaintiff has now filed an "objection" to the Court's order dismissing this case, in which he states that the order is not signed [Doc. 34], and a motion for reconsideration of this dismissal [Doc. 35], which the Court liberally construes as a motion to alter or amend judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. *See Williams v. Thaler*, 602 F.3d 291, 303-04 (5th Cir. 2010) (providing that "[w]hen a litigant files a motion seeking a change in judgment, courts typically determine the appropriate motion based on whether the litigant filed the motion within Rule 59(e)'s time limit").

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For the reasons set forth below, Plaintiff is not entitled to relief based on either of these filings and they will be **DENIED**.

I. OBJECTION

First, while Plaintiff objects to the Court's order dismissing this case because he states that it does not contain a signature in violation of Rule 11 of the Federal Rules of Civil Procedure [*Id.*], the order contains the Court's electronic signature that the Court routinely uses in its orders [Doc. 33 p. 1]. Moreover, Rule 11 does not apply to the Court. Fed. R. Civ. P. 11. Accordingly, to the extent that Plaintiff seeks relief from the Court based on this objection [Doc. 33], it is **DENIED**.

II. RULE 59(E)

In his motion for reconsideration, Plaintiff reiterates his claims, asserts that the applicable statute of limitations for his claims is two years, and states that his complaint is therefore timely and not moot [Doc. 35 pp. 1–8]. “A district court may grant a Rule 59(e) motion to alter or amend judgment only if there is: ‘(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.’” *Henderson v. Walled Lake Consol. Schs.*, 469 F.3d 479, 496 (6th Cir. 2006) (quoting *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005)). It is improper, however, for a party to use such a motion “to relitigate old matters, or to raise arguments or present evidence that could have been raised [earlier].” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008) (citation omitted). Moreover, a district court should grant such relief sparingly. *Ira Green, Inc. v. Military Sales & Serv. Co.*, 775 F.3d 12, 28 (1st Cir. 2014).

As the Court previously explained, the statute of limitations that applies to Plaintiff's claims is one year, not two, and, as such, Plaintiff's claims are untimely [Doc. 32 pp. 2–3]. Moreover, Plaintiff's mistaken belief that he had two years to file his claims is not a ground for

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relief under Rule 59(e), nor is it grounds for equitable tolling of the statute of limitations. See *Taylor v. Palmer*, 623 Fed. App'x 783, 789 (6th Cir. 2015) (holding that "it is well-established that a mistaken belief in calculating the statute of limitations does not constitute an extraordinary circumstance sufficient to warrant equitable tolling"); *Griffin v. Rogers*, 399 F.3d 626, 637 (6th Cir. 2005) (holding that "ignorance of the law alone is not sufficient to warrant equitable tolling"). As such, Plaintiff's § 1983 complaint was subject to dismissal as untimely and the Court therefore denied Plaintiff's pending motions as moot [*Id.*].

Plaintiff has not established that the Court's dismissal of this case resulted from a clear error of law or that he is otherwise entitled to relief under Rule 59(e). Accordingly, Plaintiff's motion for reconsideration [Doc. 35] is **DENIED**.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

REGINALD CHARLES HARVEY,

Plaintiff,

v.

STATE OF TENNESSEE, MARK
BENDER, P. EGO, JANE DOE, JOHN
DOE #1, AMANDA MORRIS,
GENERAL SESSIONS CRIMINAL
COURT, JOHN DOE #2, AND OFFICER
WISE,

Defendants.

No.: 1:17-CV-297-CLC-CHS

JUDGMENT ORDER

In accordance with the accompanying memorandum opinion, even liberally construing the complaint in favor of Plaintiff, it fails to state a claim upon which relief may be granted under § 1983. Accordingly, this action is **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A) and Plaintiff's pending motions [Docs. 24, 2, 29, 30, and 31] are **DENIED as moot**. Because the Court **CERTIFIED** in the memorandum opinion that any appeal from this order would not be taken in good faith, should Plaintiff file a notice of appeal, he is **DENIED** leave to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24. The Clerk is **DIRECTED** to close the file.

SO ORDERED.

ENTER:

/s/

CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE

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Handwritten text at the top of the page, possibly a date or reference number.

ENTERED AS A JUDGMENT

s/ John L. Medearis

CLERK OF COURT

Handwritten mark or signature.

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

REGINALD CHARLES HARVEY,

Plaintiff,

v.

STATE OF TENNESSEE, MARK
BENDER, P. EGO, JANE DOE, JOHN
DOE #1, AMANDA MORRIS,
GENERAL SESSIONS CRIMINAL
COURT, JOHN DOE #2, AND OFFICER
WISE,

Defendants.

No.: 1:17-CV-297-CLC-CHS

MEMORANDUM OPINION

Plaintiff is a pro se prisoner who filed his complaint for violation of his civil rights pursuant to 42 U.S.C. § 1983 in this action on October 18, 2017, based upon allegations that Defendants used excessive force against him and committed other improper acts arising out of an incident on October 29, 2015, in which various officers attempted to force Plaintiff to vacate certain property pursuant to an eviction notice and carried out what Plaintiff alleges was an unconstitutional search and seizure of his property [Doc. 2 at 9–25]. Based on this incident, Plaintiff relies on Uniform Commercial Code 3-401 to assert that Defendants violated 42 U.S.C. §§ 1982, 1983, 1986, and 241, 18 U.S.C. § 242, and his rights under the Fourth, Fifth, and Fourteenth Amendments by falsely arresting and imprisoning him and illegally searching him and seizing his property without a warrant [Doc. 2 at 19–23]. While Plaintiff was charged with a number of crimes arising out of this incident, all such charges were dismissed on August 23, 2016 [Doc. 2 at 31]. For the reasons set forth below, however, the complaint is untimely and therefore fails to state a claim upon which relief may be granted under § 1983. As such, this action will be **DISMISSED**.

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HARRIS v. UNITED STATES

I. SCREENING STANDARD

Under the PLRA, district courts must screen prisoner complaints and shall, at any time, *sua sponte* dismiss any claims that are frivolous or malicious, fail to state a claim for relief, or are against a defendant who is immune. *See, e.g.*, 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A); *Benson v. O'Brian*, 179 F.3d 1014 (6th Cir. 1999). The dismissal standard articulated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) “governs dismissals for failure state a claim under [28 U.S.C. §§ 1915(e)(2)(B) and 1915A] because the relevant statutory language tracks the language in Rule 12(b)(6).” *Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010). Thus, to survive an initial review under the PLRA, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Courts liberally construe pro se pleadings filed in civil rights cases and hold them to a less stringent standard than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

In order to state a claim under 42 U.S.C. § 1983, a plaintiff must establish that he was deprived of a federal right by a person acting under color of state law. 42 U.S.C. § 1983; *Polk County v. Dodson*, 454 U.S. 312, 315 (1981).

II. ANALYSIS

District courts apply state statutes of limitations to § 1983 claims. *Harris v. United States*, 422 F.3d 322, 331 (6th Cir. 2005). Tennessee applies a one-year statute of limitations to § 1983 actions. *Zundel v. Holder*, 687 F.3d 271, 281 (6th Cir. 2012); Tenn. Code Ann. § 28-3-104(a)(1). Federal law, however, determines “[t]he date on which the statute of limitations begins to run in a § 1983 action.” *Eidson v. State of Tenn. Dept. of Children’s Servs.*, 510 F.3d 631, 634–35 (6th Cir. 2007) (citing *Kuhnle Bros., Inc. v. Cty. of Geauga*, 103 F.3d 516, 520 (6th Cir. 1997)).

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Appendix DS

The statute of limitations for many of Plaintiff's civil rights claims began to run on October 29, 2015, the date of Plaintiff's arrest and the alleged illegal search and seizure of Plaintiff's property without a warrant. *Fox v. DeSoto*, 489 F.3d 227, 233 (6th Cir 2007) (holding that a claim for excessive force under § 1983 arising out of the effectuation of an arrest accrues at the time of arrest); *Michel v. City of Akron*, 278 F. App'x 477, 479-80 (6th Cir. 2008) (holding that a Fourth Amendment claim under § 1983 begins to run at the time of the search and seizure); *Otworth v. Vanderploeg*, 61 Fed. App'x 163, 165 (6th Cir. 2003) (holding that the statute of limitations for a due process claim began to run when the plaintiff had reason to know that he was subject to certain restrictions on a property he inherited).

The latest date on which the statute of limitations for Plaintiff's other civil rights claims began to run would be August 23, 2016, however, as that is the date on which the criminal charges against Plaintiff based on the incident in the complaint were dismissed [Doc. 2 at 31]. *See Tenn. Code. Ann.* § 28-3-104(a); *see also King v. Harwood*, 852 F.3d 568 (6th Cir. 2017) (holding that the statute of limitations for a malicious prosecution claim under § 1983 did not begin to run until the date on which a charge is dismissed); *Collyer v. Darling*, 98 F.3d 211, 220 (6th Cir. 1996) (holding that the statute of limitations for false imprisonment claim under § 1983 begins to run when plaintiff is released from false imprisonment).

As such, all of Plaintiff's claims, which he filed on October 18, 2017 [Doc. 2 at 26], are clearly time-barred.

III. CONCLUSION

For the reasons set forth above, even liberally construing the complaint in favor of Plaintiff, it fails to state a claim upon which relief may be granted under § 1983. Accordingly, this action

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will be **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A) and Plaintiff's pending motions [Docs. 24, 2, 29, 30, and 31] will be **DENIED as moot**.

The Court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. See Fed. R. App. P. 24.

AN APPROPRIATE ORDER WILL ENTER.

/s/
CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE

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17-00001-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

REGINALD CHARLES HARVEY,

Plaintiff,

v.

STATE OF TENNESSEE, *et al.*,

Defendants.

No.: 1:17-cv-297-CLC-CHS

MEMORANDUM & ORDER

This is a pro se prisoner's civil rights action brought under 42 U.S.C. § 1983 by Reginald Charles Harvey ("Plaintiff"). Upon receipt of Plaintiff's complaint [Doc. 2] and motion for leave to proceed *in forma pauperis* [Doc. 1], the Court entered a deficiency order [Doc. 14] notifying Plaintiff that he had failed to file a certified copy of his inmate trust account for the previous six-month period as required under 28 U.S.C. § 1915(a)(2). In response, Plaintiff timely submitted a second *in forma pauperis* motion with the inmate trust account certification attached [Doc. 20]. It appears from the newly submitted motion for leave to proceed *in forma pauperis* and certification that Plaintiff lacks sufficient financial resources to pay the filing fee. Accordingly, pursuant to 28 U.S.C. § 1915, Plaintiff's second *in forma pauperis* motion [Doc. 20] is **GRANTED**. Plaintiff's original motion for leave to proceed *in forma pauperis* [Doc. 1] is **DENIED as moot**.

Because Plaintiff is an inmate in the Jenkins Correctional Center, he is **ASSESSED** the civil filing fee of \$350.00. The custodian of Plaintiff's inmate trust account will be directed to submit to the Clerk, U.S. District Court, Chattanooga, Tennessee 37402, twenty percent (20%) of Plaintiff's preceding monthly income (or income credited to Plaintiff's trust account for the preceding month), but only when such monthly income exceeds ten dollars (\$10.00), until the full

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filing fee of three hundred fifty dollars (\$350.00) as authorized under 28 U.S.C. § 1914(a) has been paid to the Clerk. 28 U.S.C. § 1915(b)(2).

To ensure compliance with this fee-collection procedure, the Clerk is **DIRECTED** to mail a copy of this order to the custodian of inmate accounts at the institution where Plaintiff is now confined. The Clerk is also **DIRECTED** to furnish a copy of this order to the Court's financial deputy. This order shall be placed in Plaintiff's prison file and follow him if he is transferred to another correctional institution.

Plaintiff is **NOTIFIED** that the Court **WILL NOT** consider any amendments and/or supplements to the complaint or any other kind of motion for relief until after the Court has screened the complaint pursuant to the Prisoner Reform Litigation Act, *see, e.g.*, 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A), which the Court will do as soon as practicable. Accordingly, the Court will automatically deny any requests to amend or supplement the complaint and/or motions filed before the Court has completed this screening.

Plaintiff is **ORDERED** to immediately inform the Court and Defendants of any address changes in writing. Pursuant to Local Rule 83.13, it is the duty of a pro se party to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. E.D. Tenn. L.R. 83.13. Failure to provide a correct address to this Court within fourteen days of any change in address may result in the dismissal of this action.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE

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