

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10570
Non-Argument Calendar

D.C. Docket No. 3:18-cv-01118-RV-EMT

GERRARD D. JONES,

Plaintiff-Appellant,

versus

SHEILA SZALAI,
Nurse,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

(October 2, 2019)

Before MARCUS, ROSENBAUM, and ANDERSON, Circuit Judges.

PER CURIAM:

Gerrard D. Jones, a Florida prisoner proceeding *pro se*, appeals the *sua sponte* dismissal of his civil rights complaint against Sheila Szalai, seeking relief under 42 U.S.C. § 1983. He was granted *in forma pauperis* status. The district court determined that Jones had not provided a full list of his previous federal actions on his complaint form and dismissed the complaint without prejudice pursuant to 28 U.S.C. § 1915A.

We review a district court's *sua sponte* dismissal under § 1915A for abuse of discretion. *See Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008).

“Discretion means the district court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law.” *Zocaras v. Castro*, 465 F.3d 479, 483 (11th Cir. 2006) (quotation marks omitted).

A dismissal without prejudice generally does not constitute an abuse of discretion. *See Dynes v. Army Air Force Exch. Serv.*, 720 F.2d 1495, 1499 (11th Cir. 1983) (providing that, “because the case was dismissed without prejudice, we cannot say that the district court abused its discretion”). Such a dismissal should be allowed absent some plain prejudice other than the mere prospect of a second lawsuit. *Kotzen v. Levine*, 678 F.2d 140, 140 (11th Cir. 1982) (quotation marks omitted). However, if a claim cannot be refiled due to the running of the statute of

limitations, a dismissal is effectively a dismissal with prejudice. *Justice v. United States*, 6 F.3d 1474, 1482 n.15 (11th Cir. 1993).

A finding that the plaintiff engaged in bad faith litigiousness or manipulative tactics warrants dismissal without prejudice. *Attwood v. Singletary*, 105 F.3d 610, 613 (11th Cir. 1997) (holding that the district court did not abuse its discretion in dismissing a prisoner's civil rights complaint as a sanction for lying about his indigency and having a history of abusing judicial process). We have also affirmed the dismissal of an action without prejudice as a sanction for a *pro se* prisoner's failure to disclose the existence of a prior lawsuit while under penalty of perjury to do so. *Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998) (lying about the existence of a prior lawsuit is an abuse of judicial process), *abrogated in part on different grounds by Jones v. Bock*, 549 U.S. 199 (2007).

Here, the district court did not abuse its discretion by dismissing Jones's complaint without prejudice for malicious abuse of judicial process because it was an appropriate sanction for his omission from the complaint form of a case he previously filed. Jones knew that he was under penalty of perjury and that failure to disclose prior cases could result in the dismissal of his case. He has filed over 40 other state and federal suits, one of which was dismissed for not disclosing all prior cases. This further evidences his awareness of the potential consequences of not fully disclosing his prior cases. Additionally, Jones's motion to list additional

cases in his litigation history did not identify the omitted habeas petition. Also, Jones did not later attempt to properly amend his complaint to include additional cases after that motion was denied.

While it was a close case for the district court to decide whether to dismiss Jones's complaint, the ultimate decision to dismiss was within its "range of choice" for appropriate sanctions. *See Zocaras*, 465 F.3d at 483; *Attwood*, 105 F.3d at 613; *Rivera*, 144 F.3d at 731. Finally although the applicable statute of limitations has now run, it had not expired when Jones's complaint was first dismissed without prejudice on January 4, 2019. As such, the dismissal without prejudice did not amount to a dismissal with prejudice because Jones had approximately one month to re-file an amended complaint before the running of the statute of limitations. *See also Justice*, 6 F.3d at 1482 n.15. However, Jones forewent the opportunity to refile his complaint and instead chose to appeal.

AFFIRMED.