NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 26, 2023*
Decided June 21, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 22-3159

RICHARD MARSHALL,
Plaintiff-Appellant,

v.

ELGIN POLICE DEPARTMENT &
DETECTIVE HOUGHTON,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 22-cv-5233

Mary M. Rowland,
Judge.

O R D E R

More than two years and two lawsuits after his arrest and conviction for domestic battery, Richard Marshall sued the police department and detective that

* The defendants-appellees were not served with process and are not participating in the appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

investigated him, alleging constitutional violations. Because the district court found the suit time-barred and subject to claim preclusion, it dismissed the complaint. We affirm.

In September 2022, Marshall, who is Black, filed a complaint under 42 U.S.C. § 1983, alleging constitutional violations during his June 2018 arrest, which led to a misdemeanor conviction in December 2018. He alleged that the Elgin Police Department and a Detective Houghton (whose first name is not in the record) targeted him because of his race, arrested him without probable cause based on his wife's false reports, refused to arrest his wife, who is white, and failed to inform him of his constitutional rights.[1] (Marshall also alleged that the state trial judge in his criminal case had a conflict of interest, but he did not name the judge as a defendant, and even if he had, the judge would be entitled to absolute immunity from civil liability.)

Because Marshall applied to proceed in forma pauperis, the district court screened the complaint under 28 U.S.C. § 1915(e)(2)(B) and dismissed it without prejudice. The court explained that Marshall had already filed two cases against the Elgin Police Department and Detective Houghton about arrests in 2018; therefore, this suit was likely barred by claim preclusion. Moreover, the suit was too late because the statute of limitations for a § 1983 action is borrowed from the forum state, *see Wallace v. Kato*, 549 U.S. 384, 388 (2007), and that is two years in Illinois, 735 ILCS § 5/13-202. After identifying these defects, the court dismissed the complaint without prejudice, instructed Marshall that he could file an amended complaint, and warned that failure to follow the order would result in a dismissal with prejudice.

Marshall paid the filing fee and filed an amended complaint, which the district court screened. The court explained that the amended complaint was substantively the same as the original and the issues of claim preclusion and untimeliness rendered the suit frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). It therefore dismissed any federal claim with prejudice and "any state-law claim" without prejudice, and Marshall now appeals.

We begin by noting that even after a litigant has paid a filing fee, district courts have "ample authority" to dismiss "transparently defective" suits. *Hoskins v. Poelstra*, 320 F.3d 761, 763 (7th Cir. 2003); *see* 28 U.S.C. § 1915(e) (sua sponte dismissal permitted

[1] According to § 2.52.010 of the Code of Ordinances of Elgin, the police department is a division of the city, not an independent entity, and therefore it is not the proper party. *See* FED. R. CIV. P. 17(b)(3). Because we affirm the dismissal on grounds that apply regardless, we do not address the need for a substitution of defendants.

"[n]otwithstanding any filing fee, or any portion thereof, that may have been paid"); *see also Aljabri v. Holder*, 745 F.3d 816, 819 (7th Cir. 2014). Our review of a dismissal for legal frivolousness is plenary. *Felton v. City of Chicago*, 827 F.3d 632, 635 (7th Cir. 2016).

In his brief, Marshall primarily restates his grievances about his arrest, his allegedly unfair bench trial, and his ultimate conviction for domestic battery. As to the dismissal of his complaint, he argues only that his suit is timely. Plaintiffs need not anticipate and plead around affirmative defenses, such as the statute of limitations, but a district court may dismiss a complaint if the plaintiff pleads facts showing that a defense applies. *See Collins v. Village of Palatine*, 875 F.3d 839, 842 (7th Cir. 2017). Here, the court pointed out this defect in Marshall's complaint and provided him a chance to amend and address it; he could not.

Therefore, dismissal was proper because it is clear from the face of the amended complaint that Marshall's claim about his allegedly improper arrest is untimely. A claim of arrest without probable cause is one challenging an unlawful pretrial detention, and that claim accrues when the detention ceases. *Lewis v. City of Chicago*, 914 F.3d 472, 476–78 (7th Cir. 2019). Marshall did not allege that he was detained on this charge, but even if he was, his pleadings reveal that he was convicted in December 2018, which is as long as any "pretrial" detention could have lasted. Even if he was in jail that whole time, his September 2022 complaint was filed well past the two-year statute of limitations.

Marshall does not contest that his claim accrued more than two years before he filed this lawsuit, but he argues that 18 U.S.C. § 242 provides his real theory of relief, and thus the statute of limitations under 42 U.S.C. § 1983 is not an impediment. But Marshall is a private citizen, and 18 U.S.C. § 242 is a criminal statute, which cannot serve as the basis for his suit. *See Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

Marshall does not address the other problems with his complaint, most notably, claim preclusion. "When an adjudicator gives two independent, dispositive reasons for ruling against a party, and the party challenges only one of those grounds, any challenge to the second ground is waived, and a reviewing court may affirm." *Cortina-Chavez v. Sessions*, 894 F.3d 865, 869 (7th Cir. 2018). Waiver aside, this suit does not appear to differ from at least one of his prior cases against the same parties, involving

the same factual allegations, and resulting in a final judgment on the merits.[2] *See Daza v. Indiana*, 2 F.4th 681, 683 (7th Cir. 2021). Moreover, claims about the fairness of his trial, or any claim that implies the invalidity of his conviction, are barred by *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), unless and until the conviction is vacated. This includes allegations about the state judge's bias. And if Marshall intended to sue the judge personally, as the body of his complaint suggests, the claim would be barred by absolute judicial immunity. *See Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978).

AFFIRMED

[2] See *Marshall v. Fries*, 19-cv-00055 (N.D. Ill.); *Marshall v. Hirsch*, 20-cv-07599 (N.D. Ill.). The latter case, which also challenged the June 2018 arrest and included Houghton and the Elgin Police Department as defendants, was dismissed as untimely.