

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

_____	:	
DOZIER JOEL KEENAN,	:	
	:	Civil Action No.
Plaintiff,	:	10-0424 (RBK)
	:	
v.	:	<u>MEMORANDUM OPINION AND ORDER</u>
	:	
JUDGE RAYMAND A. BATTEN et al.,	:	
	:	
Defendants.	:	
_____	:	

IT APPEARING THAT:

1. Plaintiff, a state prisoner, initiated this action by submitting his civil complaint ("Complaint") and his application to proceed in this matter in forma pauperis. See Docket Entry No. 1. The latter qualifies Plaintiff for in forma pauperis status.
2. Plaintiff named, as Defendants in this action, Judge Batten ("Judge") of the Superior Court of New Jersey, Law Division, as well as an "Unknown Female Supervisor" ("Supervisor") and a "Police Officer, Unknown" ("Officer"). See Docket Entry No. 1, at 1 (caption).
3. The Complaint alleges that, sometime during 1994 and/or 1995, Plaintiff fell behind on his child support payments, with the arrears amounting to about \$2,500. See id. at 5. When the claim for child support payments was presented to Judge Batten during Plaintiff's hearing, Judge Batten

declined Plaintiff's offer to pay \$250 (the only amount Plaintiff, allegedly, had available) and directed Plaintiff to pay at least \$500 within two hours after the hearing. See id. According to the Complaint, the Supervisor rejected Plaintiff's attempts to pay only \$250 and stated that she would accept only a \$500 payment, pursuant to Judge Batten's order. See id. at 5. After Plaintiff failed to make the \$500 payment and, seemingly, began avoiding any contacts with law enforcement officials, see id., at 4 ("[The Judge] would not accept child support payment in the amount of \$250 . . . which force[d Plaintiff] to become [a] fugitive"), Judge Batten executed a warrant for Plaintiff's arrest.¹ See id. Apparently, Plaintiff's child support payment problems continued in 1996, since -- according to the Complaint -- Plaintiff kept making delayed child support payments during 1996. Plaintiff alleges that, fifteen minutes after he made one of these delayed payments, the Officer arrested him on the grounds of the arrest warrant authorized by Judge Batten, even though Plaintiff maintains that this particular delayed payment eliminated Plaintiff's arrears. See id.

¹ It appears from the face of the Complaint that the warrant remained outstanding, although Plaintiff's arrest was executed a year later.

4. Plaintiff asserts that Judge Batten, the Supervisor and the Officer are liable for violation of his constitutional rights. Specifically, he seeks termination of their employment and unspecified monetary damages. See id. at 7.
5. Plaintiff's allegations are subject to dismissal on various grounds. Judge Batten is absolutely immune from the instant suit under 42 U.S.C. § 1983. "[J]udges . . . are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." Figueroa v. Blackburn, 208 F.3d 435, 440 (3d Cir. 2000) (quoting Stump v. Sparkman, 435 U.S. 349, 355-6 (1978)). Because the alleged actions by Judge Batten were judicial acts which are absolutely protected from suit for damages under § 1983, all Plaintiff's claims against Judge Batten should be dismissed under 28 U.S.C. § 1915A(b) (2).
6. Plaintiff's allegations against the Supervisor are similarly subject to dismissal, since these allegations merely assert that the Supervisor refused to violate Judge Batten's order. Plaintiff had no constitutional right to have the Supervisor violate a judicial order. Therefore, his claims against the Supervisor fail.
7. Finally, Plaintiff's claims against the Officer are also subject to dismissal. Construed most favorably to

Plaintiff, these allegations assert that the Officer executed a wrongful arrest by failing to verify that Plaintiff made the delayed child support payment fifteen minutes prior to the arrest.² However, even if the Court were to hypothesize, for the purposes of this Memorandum Opinion and Order only, that such arrest could be qualified as a wrongful arrest, Plaintiff's claims against the Officer are facially time barred. Civil rights claims are best characterized as personal injury actions and are governed by the applicable state's statute of limitations for personal injury actions. See Wilson v. Garcia, 471 U.S. 261, 280 (1985). Accordingly, New Jersey's two-year limitations period on personal injury actions, N.J. Stat. Ann. § 2A:14-2, governs Plaintiff's claims. See Montgomery v. DeSimone, 159 F.3d 120, 126 & n.4 (3d Cir. 1998); Cito v. Bridgewater Township Police Dep't, 892 F.2d 23, 25 (3d Cir. 1989). Under N.J. Stat. Ann. § 2A:14-2, an action for an injury to the person caused by a wrongful act, neglect, or default must be commenced within two years of accrual of the cause of action. See Cito, 892 F.2d at 25; accord Brown v.

² To state a Fourth Amendment claim for false arrest, a plaintiff must allege two elements: (1) that there was an arrest; and (2) that the arrest was made without probable cause. See Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988). Here, the Officer was acting upon probable cause, which was supplied by the arrest warrant issued by Judge Batten.

Foley, 810 F.2d 55, 56 (3d Cir. 1987). A claim for wrongful arrest accrues Unless their full application would defeat the goals of the federal statute at issue, courts should not unravel states' interrelated limitations provisions regarding tolling, revival, and questions of application. See Wilson v. Garcia, 471 U.S. at 269. Here, Plaintiff unambiguously indicates that his arrest by the Officer took place sometime in 1996. Plaintiff's instant Complaint, however, was executed on December 21, 2009, and -- hence -- could not have been submitted to Plaintiff's prison officials for mailing to the Court prior to that date. Consequently, even if the Court were to hypothesize that Plaintiff's arrest by the Officer took place on the very last day of 1996, i.e., on December 31, 1996, Plaintiff's allegations against the Officer would be time barred for almost eleven years.³ In light of such substantial delay,

³ A § 1983 claim for false arrest typically accrues on the date of the plaintiff's arrest. See Montgomery, 159 F.3d at 126; Rose v. Bartle, 871 F.2d 331, 348-51 (3d Cir. 1989). An arrestee can file suit as soon as the allegedly wrongful arrest occurs; the limitations period begins to run, however, only when the allegedly false imprisonment ends, that is, when the arrestee becomes held by legal process, for example, when he is bound over by a magistrate or arraigned on criminal charges. See Wallace v. Kato, 549 U.S. 384, 388-90 (2007).

it appears futile to inquire about Plaintiff's grounds for equitable tolling.⁴

8. Therefore, Plaintiff's claims against Judge Batten are subject to dismissal on the grounds of judicial immunity and as time barred. Plaintiff's allegations against the Supervisor are subject to dismissal for failure to state a claim and as time barred. And Plaintiff's claims against the Officer are subject to dismissal on the grounds that the Officer acted upon probable cause and, in addition, on the grounds of the statute of limitations. In light of the foregoing, Plaintiff's Complaint shall be dismissed.
9. Although the Court recognizes that a pro se pleading is held to less stringent standards than more formal pleadings drafted by attorneys, see Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519, 520 (1972), and leave to amend should be liberally granted, such grant is not warranted where it is clear from the face of the pleading that the deficiencies of the litigant's factual allegations cannot be cured by allowing amended pleadings. See Grayson v. Mayview State Hosp., 293 F. 3d 103, 110-111 (3d Cir. 2002); Shane v. Fauver, 213 F. 3d 113, 117 (3d Cir. 2000). In this case, nothing alleged by Plaintiff

⁴ Plaintiff's Complaint is silent as to any grounds for equitable tolling. See generally, Docket Entry No. 1.

insinuates that he could cure the deficiencies in the Complaint by amending it. Accordingly, this Court will dismiss Plaintiff's challenges with prejudice.

IT IS on this 26th day of March, 2010,

ORDERED that the Clerk of the Court is directed to file the Complaint in the above-captioned action; and it is further

ORDERED that Plaintiff's application to proceed in this matter in forma pauperis is granted, and Plaintiff is assessed a filing fee of \$350.00 and shall pay the entire filing fee in the manner set forth in this Order pursuant to 28 U.S.C. § 1915(b)(1) and (2), regardless of the outcome of the litigation; and it is further

ORDERED that in each month that the amount in Plaintiff's account exceeds \$10.00, until the \$350.00 filing fee is paid, the agency having custody of Plaintiff shall assess, deduct from Plaintiff's account, and forward to the Clerk of the Court payment equal to 20% of the preceding month's income credited to Plaintiff's account, pursuant to 28 U.S.C. § 1915(b)(2), and each payment shall reference the civil docket number of this action; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order by regular mail upon the Attorney General for the State of New Jersey and upon the warden of the place of Plaintiff's current confinement; and it is further

ORDERED that the Complaint, Docket Entry No. 1, is dismissed with prejudice; and it is further

ORDERED that the Clerk shall serve this Memorandum Opinion and Order upon Plaintiff by regular U.S. mail; and it is finally

ORDERED that the Clerk shall close the file on this matter by making a new and separate entry on the docket reading "CIVIL CASE CLOSED".

s/Robert B. Kugler
Robert B. Kugler,
United States District Judge