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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT C. DENHAM, JR., also
known as Bobbie,

Plaintiff,

v.

RICHARD L. CEASE; WILLIAM
CHARLES HENRY; and WILLIAM J.
ROE,

Defendants.

NO: 2:14-CV-281-RMP

ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6) AND
REQUEST FOR JUDICIAL NOTICE

BEFORE THE COURT is Defendants’ Motion to Dismiss Pursuant to Fed.
R. Civ. P. 12(b)(6) and Request for Judicial Notice, **ECF No. 5**.¹ The motion was

¹ Defendants request that the Court take judicial notice of several court documents
filed in the underlying state action, *State of Washington v. Robert Carroll Denham*,
Spokane County Superior Court Cause No. 21042. ECF No. 5 at 4. The Court grants
Defendants’ request and takes judicial notice of the state court Special Verdicts,
Motion for Arrest of Judgment, or in the Alternative, a New Trial, the Motion to

1 heard without oral argument on November 21, 2014. The Court has reviewed the
2 motion, Plaintiff's response, ECF No. 8, Defendants' reply memorandum, ECF
3 No. 10, Plaintiff's response to Defendant's reply, ECF No. 11,² all relevant filings,
4 and is fully informed.

5 Mr. Denham's complaint, filed pursuant to 42 U.S.C. § 1983, asserts that his
6 1973 conviction and imprisonment for Second Degree Assault involved a
7 conspiracy on the part of his public defender, the prosecutor, and the presiding
8 Superior Court judge to substitute a guilty plea for a jury guilty verdict. ECF No.
9 1. Mr. Denham asserts four causes of action: (1) conspiracy to deprive him of the
10 right to appeal, (2) legal malpractice, (3) breach of fiduciary duty and (4) fraud and
11 intentional infliction of emotional distress. ECF No. 1. Defendants move to
12 dismiss the four causes of action because all of the causes of action are barred by
13 the statute of limitations.

14 Dismiss Action (Count IV), Order Dismissing Action Count IV of the Amended
15 Information, and Judgment and Sentence, all under Federal Rule of Evidence 201.
16 See ECF Nos. 5 and 10; *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th
17 Cir. 2010).

18 ² Although the Court did not grant Mr. Denham leave to file his response to
19 Defendant's reply memorandum, because Mr. Denham is appearing in this matter
20 pro se, the Court will consider his additional filing along with the other pleadings.

1 **BACKGROUND**

2 Mr. Denham was convicted by jury on March 13, 1973, of two counts of
3 second degree assault (Counts III and IV of the Amended Information). ECF No.
4 1 at 16-17. The following day, Mr. Denham’s public defender filed a Motion for
5 Arrest of Judgment, or, in the Alternative, A New Trial. ECF No. 5 at 8-9. On
6 April 25, 1973, the prosecutor moved in open court for dismissal of Count IV, and
7 the presiding judge ordered the dismissal. ECF No. 5 at 13.

8 At the same proceeding, the judge heard statements from the prosecuting
9 attorney, defense counsel, and Mr. Denham, and then issued a Findings of Fact,
10 noting that Mr. Denham had pleaded guilty to Count III of second degree assault.
11 ECF No. 1 at 19. The court entered a Judgment and Sentence, which stated that
12 the judge had “interrogated [Denham] and informed him of the charge.” The court
13 further stated that it had “been advised by the defendant that he understood the
14 nature of the charge and was ready and willing to enter his plea” Mr. Denham
15 served five years in prison and was paroled in 1978. ECF No. 8 at 9.

16 In 2012, Mr. Denham was involved in proceedings to obtain guardianship of
17 his granddaughter. He received a letter, dated August 27, 2012, from the
18 Washington Department of Social and Health Services (hereinafter “DSHS”),
19 regarding a background check conducted by DSHS. ECF No. 1 at 26; ECF No. 11
20 at 3. The letter listed six criminal incidents on Mr. Denham’s record, including

1 “Second Degree Assault Count III: Sentence 10 years.” ECF No. 1 at 26.

2 According to Mr. Denham, this letter caused him to review his “past criminal
3 incidents and outcomes.” ECF No. 1 at 4. Mr. Denham states that the DSHS letter
4 “is what led [him] to discover the “conspiracy” and its nature and extent”
5 ECF No. 8 at 3 (emphases in original).

6 Prior to receiving the letter, Mr. Denham allegedly “had NO knowledge after
7 the jury verdict of guilty of Count III and IV, . . . that Defendants had intentionally,
8 or with deliberate indifference to the jury trial verdict result changed an integral
9 part of the judicial process” ECF No. 8 at 3 (emphasis in original).

10 According to Mr. Denham, he did not learn that he had been sentenced under a
11 guilty plea until his investigation following receipt of the DSHS letter. ECF No. 8
12 at 3 He repeatedly asserts that he never pleaded guilty, *see, e.g.*, ECF No. 11 at 2-
13 4; ECF No. 8 at 6, and claims that Defendants conspired to falsify the court record
14 to reflect a guilty plea in order to deny him the ability to appeal his sentence, ECF
15 No. 1 at 4.

16 Defendants move to dismiss Plaintiff’s complaint pursuant to Federal Rule
17 of Civil Procedure 12(b)(6), arguing that the complaint is barred by the statute of
18 limitations. ECF No. 5 at 4.

DISCUSSION

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2 The parties agree that, because there is no specified statute of limitations for
3 an action filed under 42 U.S.C. § 1983, the Court looks to the law of the state in
4 which the cause of action arose and applies that state's personal injury suit statute
5 of limitations. *Wallace v. Kato*, 549 U.S. 384, 387 (2007) (stating that under §
6 1983 "federal law looks to the law of the State in which the cause of action arose,"
7 to determine the applicable statute of limitations period. The relevant statute of
8 limitations "is that which the State provides for personal-injury torts."). The
9 parties agree that the statute of limitations for personal injury actions in
10 Washington State is three years from the time the cause of action accrues. Wash.
11 Rev. Code § 4.16.080 (2006).

12 In this case, Mr. Denham alleges a §1983 claim based on violations of his
13 Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. ECF
14 No. 1 at 1. Mr. Denham specifies four specific causes of actions that allegedly
15 comprise the conspiracy that he alleges deprived him of his Constitutional rights:
16 (1) conspiracy to deprive him of the right to appeal, (2) legal malpractice, (3)
17 breach of fiduciary duty and (4) fraud and intentional infliction of emotional
18 distress. In analyzing whether the causes of action are barred, the Court relies on
19 Washington State's three year statute of limitation for personal injury actions.
20

1 Defendants contend that the causes of action accrued on April 25, 1973, the
2 day that the Court found that Mr. Denham pleaded guilty. ECF No. 5 at 4. Mr.
3 Denham argues in opposition that the causes of action accrued on August 27, 2012,
4 when he received the DSHS letter. ECF No. 11 at 2.

5 “[T]he accrual date of a § 1983 cause of action is a question of federal law
6 that is not resolved by reference to state law.”³ *Wallace*, 549 U.S. at 388. “It is the
7 standard rule that accrual occurs when the plaintiff has a complete and present
8 cause of action . . . , that is, when the plaintiff can file suit and obtain relief.”
9 *Wallace*, 549 U.S. at 388 (quoting *Bay Area Laundry and Dry Cleaning Pension*
10 *Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997)) (internal quotation
11 marks omitted).

12 Additionally, federal courts are instructed to apply all applicable tolling
13 provisions provided by state law. *Wallace*, 549 U.S. at 394. Two Washington
14 state tolling provisions are relevant here. First, at the time of Mr. Denham’s
15 incarceration, Washington law tolled the statute of limitations during
16 imprisonment. Wash. Rev. Code § 4.16.090 (1971) (amended 1993). Current

17 ³ Mr. Denham asserts several causes of action which do not constitute violations of
18 federal law. Section 1983 applies only to violations of federal law, but the Court
19 interprets Mr. Denham’s reference to the state causes of action as being the bases
20 for his allegations of conspiracy.

1 Washington law tolls the statute only during incarceration prior to conviction.
2 Wash. Rev. Code §4.16.190(1) (2006). The Court will apply the earlier, more
3 generous tolling provision. Mr. Denham states that he was paroled in 1978. ECF
4 No. 8 at 9. Applying the earlier tolling provision, the statute of limitations for this
5 action expired in 1981, three years after Mr. Denham was released from prison.

6 Second, the statute of limitations may be tolled by the “discovery rule,”
7 which provides that the statute of limitations does not begin to run until the
8 complainant discovers, or in the exercise of reasonable diligence should have
9 discovered, the facts giving rise to the action. “A federal claim accrues when the
10 plaintiff knows or has reason to know of the injury which is the basis of the
11 action.” *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991)
12 (quoting *Norco Constr., Inc. v. King Cnty.*, 801 F.2d 1143, 1145 (9th Cir. 1986))
13 (internal quotation marks omitted).

14 Washington law provides that in an action alleging fraud, “the cause of
15 action [shall] not be deemed to have accrued until the discovery by the aggrieved
16 party of the facts constituting the fraud.” Wash. Rev. Code § 4.16.080 (4). In
17 interpreting this provision, the Ninth Circuit has stated that “the statute of
18 limitations begins to run when the plaintiff knew or should have known all of the
19 essential elements of its applicable cause of action.” *Coto Settlement*, 593 F.3d at
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1 1038-39 (citing *La.-Pac. Corp. v. ASARCO, Inc.*, 24 F.3d 1565, 1580 (9th Cir.
2 1994).

3 Mr. Denham relies on the DSHS letter that he received in August of 2012 as
4 a basis for tolling the statute of limitations, maintaining that he did not look into
5 the details of the 1973 conviction until he received the letter. ECF No. 8 at 9.
6 Thus, Mr. Denham argues that the discovery rule should apply, tolling the statute
7 of limitations until August of 2012 when he received the DSHS letter.

8 Although Mr. Denham may not have discovered the alleged impropriety of
9 his conviction until the letter from DSHS provoked him to conduct an
10 investigation, Mr. Denham should have made that discovery much earlier. Mr.
11 Denham contends that “he never pleaded guilty to any of the charges,” ECF No. 8
12 at 8, yet he was apparently present when the court accepted his guilty plea to Count
13 III of the indictment on April 25, 1973, ECF No. 1 at 19 (“ . . . [T]he court after
14 hearing the statement of the prosecuting attorney, the defense counsel and the
15 defendant”); ECF No. 1 at 21 (“Robert Carroll Denham, being represented by
16 Richard D. Cease, his attorney, appeared before the Honorable Willard J. Roe on
17 April 25, 1973, and upon his plea of guilty”). Additionally, the Board of
18 Prison Terms and Paroles apparently interviewed Mr. Denham regarding his
19 conviction and sentence prior to sentencing him. ECF No. 1 at 24 (“The Board of
20 Prison Terms and Paroles . . . having interviewed said convicted person”).

1 Mr. Denham has not alleged that the 2012 DSHS letter contained any new
2 information that was previously unavailable to, or concealed from, Mr. Denham.
3 The letter merely stated the fact, of which Mr. Denham should have been aware,
4 that he had been convicted of second degree assault. Apart from Mr. Denham's
5 alleged ignorance of the fact that he was convicted pursuant to a plea rather than a
6 jury verdict, Mr. Denham has not alleged any additional facts which provide the
7 basis for his injury or the elements of his alleged causes of action of which he was
8 not previously aware. By the exercise of due diligence he should have discovered
9 these facts earlier, and therefore is not entitled to application of the discovery rule
10 tolling the statute of limitations. The Court finds that Plaintiff's claim is barred by
11 the applicable statute of limitations for bringing such an action.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 (1) Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and
14 Request for Judicial Notice, **ECF No. 5**, is **GRANTED**;

15 (2) Plaintiff's claim against Defendants is **DISMISSED** with prejudice.

16 The District Court Executive is directed to enter this Order, enter judgment
17 accordingly, provide copies to counsel and to pro se Plaintiff, and **close this case**.

18 **DATED** this 7th day of January 2015.

19 s/ Rosanna Malouf Peterson
20 ROSANNA MALOUF PETERSON
Chief United States District Court Judge