[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 17-13304
Non-Argument Calendar

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D.C. Docket No. 4:16-cv-00032-LGW-GRS

MARVIN LEE HEIGHT,

Plaintiff - Appellant,

versus

SAMUEL L. OLENS,
STATE OF GEORGIA,
WARDEN,
THE GEORGIA INNOCENT PROJECT,

Defendants - Appellees.

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Appeal from the United States District Court
for the Southern District of Georgia

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(August 31, 2018)

Before TJOFLAT, NEWSOM, and JULIE CARNES, Circuit Judges.

PER CURIAM:

In 2001, Marvin Height ("Plaintiff") was convicted of murder in Georgia state court. Since then, Plaintiff has challenged his conviction through both state and federal habeas corpus petitions. *See Height v. McLaughlin*, No. CV 309-064, 2010 WL 4831577, at *1–2 (S.D. Ga. Oct. 26, 2010), *adopted*, 2010 WL 4831221 (S.D. Ga. Nov. 22, 2010).

In 2016, Plaintiff filed this suit under 42 U.S.C. § 1983 against the state of Georgia, former Georgia Attorney General Samuel Olens, Warden Walter Berry, and the Georgia Innocence Project alleging that he is actually innocent and seeking access to DNA evidence that would exonerate him. The magistrate judge concluded that Plaintiff's claim is time-barred by Georgia's two-year statute of limitations and recommended dismissing Plaintiff's complaint under 28 U.S.C. § 1915A. Over Plaintiff's objections, the district court adopted the magistrate judge's report and recommendation and dismissed Plaintiff's complaint. After careful consideration, we affirm.

We review *de novo* the district court's dismissal under § 1915A. *Waldman v. Conway*, 871 F.3d 1283, 1289 (11th Cir. 2017). And, because Plaintiff is proceeding *pro se*, we liberally construe his complaint. *Id.*

When a prisoner files a complaint against a government entity, officer, or employee, the district court must screen the complaint and dismiss it if the complaint "fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(b)(1). So, under § 1915A, a complaint is "subject to dismissal" if the allegations "show that relief is barred by the applicable statute of limitations." *Jones v. Bock*, 549 U.S. 199, 215 (2007).

As an initial matter, Plaintiff does not raise the statute of limitations issue on appeal, so he has abandoned this issue. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("While we read briefs filed by *pro se* litigants liberally, issues not briefed on appeal by a *pro se* litigant are deemed abandoned." (citations omitted)).

Even if Plaintiff had preserved the statute of limitations issue, the district court was correct to find that Plaintiff's claim is time-barred. "Federal courts apply their forum state's statute of limitations for personal injury actions to actions brought pursuant to 42 U.S.C. § 1983." *Uboh v. Reno*, 141 F.3d 1000, 1002 (11th Cir. 1998). And federal law "determines when the statute of limitations begins to run." *Lovett v. Ray*, 327 F.3d 1181, 1182 (11th Cir. 2003).

Georgia's statute of limitations is two years. O.C.G.A. § 9-3-33 ("[A]ctions for injuries to the person shall be brought within two years after the right of action accrues."). Under federal law, "the statute of limitations begins to run from the date 'the facts which would support a cause of action are apparent or should be

apparent to a person with a reasonably prudent regard for his rights.'" *Brown v. Ga. Bd. of Pardons and Paroles*, 335 F.3d 1259, 1261 (11th Cir. 2003) (quoting *Rozar v. Mullis*, 85 F.3d 556, 561–62 (11th Cir. 1996)).

Plaintiff knew of the existence of the potentially exculpatory DNA evidence no later than January 22, 2008, when he filed a state habeas corpus petition alleging that his trial counsel provided ineffective assistance of counsel by failing to conduct independent DNA testing and by failing to move for post-conviction DNA testing. *See Height*, 2010 WL 4831577, at *1. Plaintiff did not file the complaint in this case until January 27, 2016, almost eight years later—well after the two-year statute of limitations had run. Thus, his claim is time-barred.

**AFFIRMED.**