

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

DONALD RAY SANDERSON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 5:15-cv-00703-VEH-SGC
)	
MARION COUNTY JAIL)	
OFFICIALS, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION

On February 10, 2016, the magistrate judge filed a report recommending this action, filed pursuant to 42 U.S.C. § 1983, be dismissed under 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief may be granted. (Doc. 12). Specifically, the magistrate judge concluded that the plaintiff’s claims, which are based on an incident which occurred on June 22, 2007, are barred by the applicable statute of limitations. (*Id.*). The plaintiff filed objections to the report and recommendation on February 18, 2016. (Doc. 13).

In his objections, the plaintiff states he filed a lawsuit in this court in 2009 concerning the incident forming the basis of the instant matter. (Doc. 13 at 3). Court records reveal that the plaintiff indeed filed a lawsuit on July 30, 2009, in which he

alleges similar facts.¹ The district court dismissed the action without prejudice on November 23, 2009, due to the plaintiff's failure to pay an initial partial filing fee and sign a Prisoner Consent Form. The plaintiff appealed the dismissal to the Eleventh Circuit Court of Appeals. On November 8, 2010, the Eleventh Circuit affirmed the district court's dismissal of the plaintiff's prior action.

The fact that the plaintiff filed a lawsuit in 2009 based on the same facts as the present case does not excuse his failure to timely file the present action. The plaintiff's 2009 lawsuit was dismissed without prejudice and, therefore, the plaintiff was free to file a second lawsuit concerning his claims. Although the plaintiff appealed the dismissal of his 2009 case, which the appellate court affirmed in November 2010, the plaintiff has not addressed why he waited until April 2015—over four years later—to file the present lawsuit.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the plaintiff's objections are **OVERRULED**, the magistrate judge's report is **ADOPTED**, and the recommendation is **ACCEPTED**. Accordingly, the complaint is due to be dismissed pursuant to 28 U.S.C. § 1915A(b)(1) for failing to state a claim upon which relief may be granted.

¹ See *Sanderson v. State of Alabama*, Case No. 2:09-cv-01528-JHH-PWG.

A Final Judgment will be entered.

DONE and **ORDERED** this 9th day of March, 2016.

A handwritten signature in black ink, appearing to read "V. Emerson Hopkins", written in a cursive style.

VIRGINIA EMERSON HOPKINS
United States District Judge