

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION

MONTEGO MCCLURE

PLAINTIFF

v.

Case No. 12-6113

ANDREA L. DAVIS, Attorney,  
Hot Springs, Arkansas; and  
JUDGE ROBERT MCALLUM, Ninth  
Judicial District

DEFENDANTS

**ORDER**

Now on this 8th day of July 2013, there comes on for consideration the report and recommendation filed herein on April 3, 2013, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 5). Also before the Court are Plaintiff's objections. (Doc. 7).

The court has reviewed this case *de novo* and, being well and sufficiently advised, finds as follows: Plaintiff's objection to the portion of the report and recommendation recommending dismissal for his action being barred by the statute of limitations is sustained. Plaintiff timely filed his action within the three year statute of limitations. The report and recommendation is adopted as to the recommendation that Plaintiff's action be dismissed as Andrea Davis, acting as a public defender, is not subject to suit, and Judge Mcallum is immune from suit.

Plaintiff contends he also sued both defendants in their individual capacities. The Court has reviewed Plaintiff's

Complaint and presumes Plaintiff only sued defendants in their official capacities, because the complaint does not specifically name them in their individual capacities. *Zajrael v. Harmon*, 677 F.3d 353 (8th Cir. 2012) (citations omitted). Accordingly, Plaintiff's Motion to Proceed IFP (doc. 1) is DENIED, and Plaintiff's Complaint is DISMISSED on the grounds that the claims are frivolous, fail to state claims, and seek relief against defendants who are immune from suit. See 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). The dismissal of this case will constitute a strike under 28 U.S.C. § 1915(g). The U.S. District Clerk is directed to place a § 1915(g) strike flag on this case.

IT IS SO ORDERED.

/s/ Robert T. Dawson  
Honorable Robert T. Dawson  
United States District Judge