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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DENNIS WAYNE WILSON,

Plaintiff,

v.

PIERCE, et al.,

Defendants.

Case No. 1:16-cv-00479-LJO-SKO-(PC)

**ORDER FOR PLAINTIFF TO SHOW  
CAUSE WHY THIS ACTION SHOULD  
NOT BE DISMISSED WITH PREJUDICE  
AS BARRED BY THE STATUTE OF  
LIMITATIONS AND BY *HECK V.  
HUMPHRY*, 512 U.S. 477 (1994) and  
*EDWARDS v. BALISOK*, 520 U.S. 641 (1997).**

**(Docs. 1, 7)**

**21-DAY DEADLINE**

**INTRODUCTION**

Plaintiff, Dennis Wayne Wilson, is a former state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff complains of events that occurred in 2011 when he allegedly was wrongly charged with and found guilty of a Rules Violation Report (“RVR”) because he refused to sign a form agreeing to parole conditions. (Doc. 1.) Plaintiff alleges he was wrongly placed on parole rather than being fully released after serving his sentence which did not include any parole. (*Id.*) As a result of being found guilty, Plaintiff lost “time and credits.” (*Id.*, p. 9) Plaintiff alleges that he has been “over detained due to illegal construction of his sentence.” (*Id.*, p. 9.)

**A. Plaintiff’s Claims Appear Barred by the Statute of Limitations**

Upon review of the Complaint, it is apparent that Plaintiff is barred by the statute of limitations as all of his claims and allegations are based on incidents that occurred in 2011.

1           The applicable statute of limitations starts to run upon accrual of the plaintiff's claim, i.e.  
2 when he knows or has reason to know of the injury that is the basis of his action, *Douglas v.*  
3 *Noelle*, 567 F.3d 1103, 1109 (9th Cir. 2009), which is normally on the date of injury, *Ward v.*  
4 *Westinghouse Canada, Inc.*, 32 F.3d 1405, 1407 (9th Cir.1994). Actions under section 1983 fall  
5 under the limitations period from the forum state's statute of limitations for personal injury torts,  
6 *see Wallace v. Kato*, 549 U.S. 384, 387, 127 S.Ct. 1091 (2007), which is two years in California,  
7 *see Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); Cal. Civ. Proc. Code § 335.1.

8           The two-year statute of limitations period is tolled for two years if the plaintiff is a  
9 prisoner serving a term of less than life which gives such prisoners effectively four years to file a  
10 federal suit. *See* Cal. Civ. Proc. Code § 352.1(a); *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir.  
11 2002) (federal courts borrow the state's California's equitable tolling rules if they are not  
12 inconsistent with federal law). Thus, Plaintiff had four years from the date of the incidents at  
13 issue to file suit.

14           The claims Plaintiff seeks to pursue in this action are barred by the statute of limitations.  
15 His claims allegedly accrued, and the statute of limitations started running, in 2011. (Doc. 1, pg.  
16 4.) He was entitled to four years (the sum of the time allowed by the usual limitations period and  
17 equitable tolling under section § 352.1) from that time to file suit. He, therefore, had until 2015,  
18 at the latest, to file suit. He did not file this action until March 24, 2016 -- well after the 2015  
19 deadline.

20           Thus, Plaintiff's claims from incidents that occurred in 2011 appear barred by the statute  
21 of limitations.

22           **B. Plaintiff's Claims Appear Barred by *Heck v. Humphry*, 512 U.S. 477 (1994)  
and *Edwards v. Balisok*, 520 U.S. 641 (1997)**

23           When a prisoner challenges the legality or duration of his custody, or raises a  
24 constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a  
25 writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young v. Kenny*, 907 F.2d 874  
26 (9th Cir. 1990), *cert. denied* 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an  
27 allegedly unconstitutional conviction or imprisonment, "a § 1983 plaintiff must prove that the  
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