

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Keith Eugene Washington,

Plaintiff.

v.

ORDER  
Civil No. 13-3372

Mark Uner, Cheryl Binder  
and other correctional officers,

Defendants.

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The above-entitled matter comes before the Court on Plaintiff's objections to the Report and Recommendation of Magistrate Judge Jeffrey J. Keyes dated February 26, 2014. Plaintiff objects to the recommendation that this matter be dismissed with prejudice as the claim is time-barred. Plaintiff asserts that he had previously brought a claim based on the same underlying facts, but that the claim was dismissed without prejudice because he had failed to exhaust his administrative remedies. Plaintiff now claims that he has exhausted his administrative remedies.

Assuming that Plaintiff has now exhausted his administrative remedies, this action is nonetheless time-barred. In his complaint, Plaintiff alleges that in March 2003, he was assaulted by fellow prison inmates, and that correctional

officers had prior knowledge of the assault, and did nothing to protect Plaintiff.

As noted by the Magistrate Judge, Plaintiff's claim is subject to the six year statute of limitations period set forth in Minn. Stat. § 54.05, subd. 1(5). Egerdahl v. Hibbing Comty College, 72 F.3d 615, 618 n. 3 (8th Cir. 1995). Thus, Plaintiff had to have brought this action on or before March 2009 for it to be timely-filed.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based on that review, the Court will adopt the Report and Recommendation in its entirety.

**IT IS HEREBY ORDERED** that:

1. Plaintiff's application to proceed in forma pauperis, (Docket Nos. 2 and 7) is **DENIED**;

2. This action is **SUMMARILY DISMISSED** pursuant to 28 U.S.C. § 1915A(b);

3. Plaintiff is required to pay the unpaid balance of the court filing fee, namely \$344.00, in accordance with 28 U.S.C. § 1915(b)(2); and

4. For purposes of 28 U.S.C. § 1915(g), this action is dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: March 26, 2014.

s/ Michael J. Davis

MICHAEL J. DAVIS

Chief Judge

United States District Court