

FILED  
BILLINGS DIV.

2010 OCT 19 PM 12 17

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

PATRICK E. DUFFY, CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

**BILLINGS DIVISION**

**JACKSON BRYANT BAUGUS,** )

**Plaintiff,** )

**v.** )

**BILLINGS POLICE** )

**DEPARTMENT, ET AL.,** )

**Defendant.** )

\_\_\_\_\_ )

**Cause No. CV-10-61-BLG-RFC**

**ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS OF  
U.S. MAGISTRATE JUDGE**

Plaintiff Jackson Bryant Baugus, a federal prisoner proceeding *pro se*, brings a 42 U.S.C. § 1983 for the alleged deprivation of his constitutional right to due process related to the 2002 seizure of his Cadillac El Dorado by Billings police. United States Magistrate Judge Carolyn Ostby has entered Findings and Recommendation (*Doc. 4*) with respect to the 28 U.S.C. §§ 1915A prescreening of Bagus’s complaint (*Doc. 2*). Magistrate Judge Ostby recommends the Complaint be dismissed as frivolous and that Baugus’s motion to proceed *in forma pauperis* be denied.

Upon service of a magistrate judge’s findings and recommendation, a party

has 14 days to file written objections. 28 U.S.C. § 636(b)(1). After seeking two extensions of time to file objections, Baugus filed timely objections on October 15, 2010, as well a motion to for leave to amend his complaint and a motion to strike Magistrate Judge Ostby's Findings and Recommendations, which this Court will construe as an objection. *Docs. 10-12*. Accordingly, the Court must make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). For the following reasons, Baugus's objections are overruled.

In his motion to strike, Baugus argues that Magistrate Judge Ostby is without authority to preside over his case without the consent of all the parties. Baugus repeats this argument in his objections. Regardless, the objection is without merit because, pursuant to 28 U.S.C. § 636 (b)(1)(B), this Court has authorized Magistrate Judge Ostby to submit findings and recommendations as to the prescreening of Baugus's pro se prisoner complaint.

Baugus also objects that he has the right to file an amended complaint and, in fact, filed a motion to amend his complaint (*Doc. 10*). Magistrate Judge Ostby is correct that amendment would be futile because, among other things, the three year statute of limitations on § 1983 claims expired years ago. Although Baugus claims statute of limitation should be tolled while he was imprisoned, Montana

law does not provide for the tolling of the limitations period due to incarceration.

*See* Mont. Code Ann. § 20-2-401.

As his third objection, Baugus again argues that one or more Defendants failed to give him notice that his Cadillac was confiscated. Nevertheless, even if we assume the truth of this allegation, the statute of limitations has long since run on any claims related to the seizure of his vehicle.

Finally, Baugus argues that the State of Montana never prosecuted him for criminal charges. This objection is overruled as irrelevant.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and **HEREBY ORDERS** they be adopted in their entirety.

Accordingly, **IT IS FURTHER ORDERED** as follows:

- (1) Baugus's Motion to Proceed *In Forma Pauperis* (Doc.1) is **DENIED**;
- (2) Baugus's Motion for Leave to Amend (Doc. 10) is **DENIED**;
- (3) Baugus's Motion to Strike (Doc. 11) is **DENIED**; and
- (4) Baugus's Complaint (Doc. 2) is **DISMISSED WITH PREJUDICE** as frivolous.

The docket sheet in this matter shall reflect that the filing of this frivolous lawsuit count as one strike against Baugus pursuant to 28 U.S.C. § 1915(g).

The Clerk of Court is directed to enter judgment, by separate document,  
accordingly.

DATED this 19<sup>th</sup> day of October, 2010.



RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE