

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM FREDERICK JENSEN,

CASE NO. C16-1963-MJP

Plaintiff,

ORDER ADOPTING REPORT AND
RECOMMENDATION;
DISMISSING CASE WITH
PREJUDICE

STATE OF WASHINGTON, et al.,

Defendants.

THIS MATTER comes before the Court on Plaintiff's Objections (Dkt. No. 77) to the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge. (Dkt. No. 75.) Having reviewed the Report and Recommendation, the Objections, the Response (Dkt. No. 78), and all related papers, the Court ADOPTS the Report and Recommendation and DISMISSES the matter with prejudice.

Background

The relevant facts and procedural background are set forth in detail in the Report and Recommendation. (Dkt. No. 75.) Plaintiff objects to the Report and Recommendation's finding

1 that his claims are barred by the applicable statutes of limitations, which he contends were tolled
2 while he exhausted his administrative remedies. (Dkt. No. 77 at 1-2.)

3 **Discussion**

4 **I. Legal Standard**

5 Under Federal Rule of Civil Procedure 72, the Court must resolve de novo any part of the
6 Magistrate Judge's Report and Recommendation that has been properly objected to and may
7 accept, reject, or modify the recommended disposition. Fed. R. Civ. P. 72(b)(3); see also 28
8 U.S.C. § 636(b)(1).

9 **II. Statute of Limitations**

10 Each of Plaintiff's claims is subject to a three-year statute of limitations. See RCW
11 4.16.080; RK Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1058 (9th Cir. 2002); Knight v.
12 Washington State Dept. of Corrections, 147 F. Supp. 3d 1165, 1169-70 (W.D. Wash. 2015);
13 Antonius v. King Cnty., 153 Wn.2d 256, 261-62 (2004). “[T]he limitations period accrues when
14 a party knows or has reason to know of the injury which is the basis of the cause of action.”
15 Kimes v. Stone, 84 F.3d 1121, 1128 (9th Cir. 1996) (citation omitted). While the statute of
16 limitations is tolled “during the time period in which an inmate is *actively exhausting* his
17 administrative remedies,” an inmate is “not entitled to tolling during the time he abandoned the
18 process.” Soto v. Sweetman, 882 F.3d 865, 875 (9th Cir. 2018) (emphasis in original). Here,
19 Plaintiff filed his original Complaint on December 22, 2016. (See Dkt. Nos. 1, 2.) Therefore,
20 any claims arising before December 22, 2013 are barred by the statutes of limitations unless
21 Plaintiff can show that he was actively exhausting his administrative remedies as of this date.

22 Plaintiff alleges that, in response to allegations that he was soliciting other inmates for
23 sex, he was placed in administrative segregation beginning on January 19, 2011 and was not
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1 released until March 5, 2012. (Dkt. No. 63 at ¶¶ 28, 54.) During this time, his administrative
2 segregation status was reviewed and he was recommended for a six-month intensive
3 management program and placed on Intensive Management Status (“IMS”) until February 15,
4 2012. (Id. at ¶¶ 23, 29-46.) Thus, the Court considers whether Plaintiff exhausted his
5 administrative remedies with regard to his administrative segregation placement and his IMS
6 placement claims in turn:

7 **A. Administrative Segregation Placement**

8 After he was placed in administrative segregation, Plaintiff alleges he sent multiple
9 communications to various prison officials requesting review of his placement. (Id. at ¶¶ 29-53.)
10 On August 9, 2011, Plaintiff received a letter from John Campbell, DOC Correctional Specialist,
11 explaining that his appeals had been denied. (See Dkt. No. 68, Ex. 11 (“The allegations you
12 make . . . are not substantiated. You allege a widespread conspiracy requiring collusion between
13 staff and offenders and after review this is found not to be the case.”).) Therefore, the Court
14 finds that Plaintiff’s administrative segregation claim was tolled until August 9, 2011.

15 **B. IMS Placement**

16 After he was released from administrative segregation on March 5, 2012, Plaintiff waited
17 until October 28, 2014 to appeal his “placement, assignment and retention in [administrative
18 segregation] on IMS between January 19, [2011] to March 5, 2012 and August 16, 2010 to
19 September 22, 2010.” (Dkt. No. 63 at ¶ 57, Ex. Z.) On December 9, 2014, DOC Classification
20 and Case Management Administrator Liza Rohrer denied Plaintiff’s appeal, and explained that
21 he could have appealed between October 17, 2011 (the date on which the applicable appeals
22 policy for IMS classification was established) and June 14, 2012 (the date on which the revised

1 policy was established). (See Dkt. No. 68, ¶ 24, Ex. 10.) Therefore, the Court finds that
2 Plaintiff's IMS placement claim was tolled until June 14, 2012.

3 While Plaintiff, in his Objections to the Report and Recommendation, claims that "the
4 DOC's policies were vague and nebulous and in some instances nonexistent" and that "certain
5 defendants deliberately concealed and obfuscated the appeal and review process to deny [him]
6 due process of law and to prevent his legitimate claims from receiving judicial review" (Dkt. No.
7 77 at 2), Plaintiff does not identify any non-conclusory or non-speculative facts to support this
8 contention, nor does he explain why he waited more than three years to file his Complaint.

9 **Conclusion**

10 The Court concludes that, notwithstanding tolling, Plaintiff did not bring his claims until
11 well beyond the expiration of the applicable statutes of limitations, and ORDERS as follows:

12 (1) The Report and Recommendation is ADOPTED;
13 (2) The case is DISMISSED WITH PREJUDICE;
14 (3) The Clerk of Court is directed to send copies of this Order to Judge Tsuchida and all
15 counsel.

16 Dated June 18, 2018.

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19 Marsha J. Pechman
20 United States District Judge
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