

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WENDELL VEY CRAWFORD,  
Plaintiff-Appellant,

UNPUBLISHED  
March 29, 2012

v

LAPEER COUNTY PROSECUTOR,  
Defendant-Appellee.

No. 302836  
Lapeer Circuit Court  
LC No. 10-043332-NO

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Before: BORRELLO, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's February 18, 2011 dismissal of his complaint upon a finding that the claims were barred by the statute of limitations. While the trial court erred in dismissing plaintiff's complaint on the basis that his claims were barred by the statute of limitations, we hold that plaintiff's complaint does not contain a legally cognizable claim under 42 USC § 1983. Accordingly, we affirm the dismissal of plaintiff's complaint, albeit on different legal grounds.

Plaintiff pleaded guilty to a charge of larceny in an amount over \$50 on June 11, 1951, and served six months in jail and one year on probation. On February 24, 2009, after plaintiff moved for relief from judgment, the trial court vacated plaintiff's 1951 conviction, finding that at the time plaintiff entered his guilty plea, he was not represented by counsel and had not been properly advised that if he requested an attorney, one would be provided to him. On October 8, 2010, plaintiff filed a civil complaint against defendant, the prosecutor at the time of plaintiff's 1951 conviction, in his official capacity, alleging, as noted by the trial court, a "confusing amalgam of allegations." The trial court subsequently dismissed plaintiff's complaint, finding that it was barred by the statute of limitations.

The sole issue raised in plaintiff's statement of the question presented on appeal is whether the trial court erred in finding that plaintiff's § 1983 malicious prosecution claim was barred by the statute of limitations.<sup>1</sup> The three-year statute of limitations for personal injury

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<sup>1</sup> In addition to his challenge to the trial court's ruling on the statute of limitations, plaintiff argues that he was never served with defendant's motion to strike, makes an apparent argument

actions in Michigan applies to plaintiff's § 1983 claim. See *Wilson v Garcia*, 471 US 261, 271-272; 105 S Ct 1938; 85 L Ed 2d 254 (1985), superseded by statute on other grounds *Jones v R R Donnelley & Sons Co*, 541 US 369, 379-380; 124 S Ct 1836; 158 L Ed 2d 645 (2004); *Evans v Hebert*, 203 Mich App 392, 395; 513 NW2d 164 (1994); MCL 600.5805(10). However, plaintiff's claim did not accrue, and the statute of limitations did not begin to run, until his conviction was vacated in February of 2009. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 15; 672 NW2d 351 (2003), citing *Heck v Humphrey*, 512 US 477, 486-489; 114 S Ct 2364; 129 L Ed 2d 383 (1994) ("It is well established that [in] § 1983 claims based on malicious prosecution, the statute of limitations does not begin to run until the underlying criminal action is terminated in favor of the accused."). Plaintiff's claim was filed in October of 2010, 20 months after his claim accrued. Because plaintiff filed his claim within the three-year limitations period, the trial court erred in dismissing plaintiff's § 1983 claim based on the application of the statute of limitations.

Nevertheless, "this Court will affirm where the trial court came to the right result even if for the wrong reason." *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009). Although plaintiff's complaint is not barred by the statute of limitations, plaintiff's complaint against defendant in his official capacity as the prosecutor for Lapeer County is not cognizable under § 1983. "[A] § 1983 action for monetary damages for alleged federal constitutional violations may not be brought in state courts against the state or a state official sued in an official capacity." *Bay Mills Indian Community v Mich*, 244 Mich App 739, 749; 626 NW2d 169 (2001) (citation omitted). County prosecuting attorneys, when prosecuting individuals for violations of state law, are considered state officials for § 1983 purposes, and a suit brought against a prosecuting attorney for actions taken while prosecuting state criminal charges, when brought against the prosecutor in his official capacity, is not cognizable under § 1983. See *Cady v Arenac Co*, 574 F3d 334, 342-343 (CA 6, 2009). In this case, plaintiff's claim is based on actions taken by defendant in prosecuting plaintiff for a violation of state law. Defendant was acting as a state official,<sup>2</sup> and plaintiff's suit against defendant in his official capacity is not cognizable under § 1983. On this basis, dismissal of plaintiff's § 1983 malicious prosecution claim was proper.

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that the trial court abused its discretion in granting the motion to strike, contends that this Court should grant plaintiff a default judgment in the amount of \$2,650,000, and presents arguments that appear to assert state law claims of malicious prosecution, negligence, and abuse of process against defendant. However, plaintiff failed to properly present these issues by failing to raise them in the question presented in his appellate brief, and accordingly, we decline to further address the merits of these arguments. MCR 7.212(C)(5); *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008) (citation omitted).

<sup>2</sup> See, 1948 CL 750.356.

Affirmed. Defendant being the prevailing party is entitled to costs. MCR 7.219.

/s/ Stephen L. Borrello  
/s/ Jane M. Beckering  
/s/ Elizabeth L. Gleicher