[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13659
Non-Argument Calendar

D.C. Docket No. 2:17-cv-14045-RLR

EDGARDO SENSI,

Plaintiff-Appellant,

versus

STATE OF FLORIDA OFFICERS OF
THE COURT,
MARTIN COUNTY SHERIFF'S OFFICE,
EDWARD GALANTE,
Defense Attorney, in his official capacity,
JUDGE ELIZABETH A. METZGER,
19th Judicial Circuit Court,
MARSHA EWING,
Former Clerk of the Circuit Court,
et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(May 31, 2018)

Before WILSON, MARTIN, and JORDAN, Circuit Judges.

PER CURIAM:

Edgardo Sensi, proceeding pro se, appeals the district court's sua sponte dismissal of his 42 U.S.C. § 1983 amended complaint as time-barred.

I.

Sensi's claims are based on the September 10, 2008 search of his Florida residence for evidence of child pornography. In 2012, he pled guilty in federal court in Connecticut to conspiracy to produce child pornography, production of child pornography, and illicit sexual conduct in foreign places. United States v. Sensi, 542 F. App'x 8, 9 (2d Cir. 2013) (per curiam). During a suppression hearing and during sentencing, Sensi argued that the search warrant and inventory list from the search had been altered, and that the signature of the issuing judge—Florida Circuit Court Judge Elizabeth Metzger—had been forged. After receiving assurances from Judge Metzger that the signatures were authentic, the district court rejected this argument. Sensi was sentenced to 85-years imprisonment. Id. On direct appeal, he challenged the validity of the search, but the Second Circuit affirmed his conviction. Id. at 10–11.

On February 6, 2017, Sensi filed a motion in federal court in Florida titled "motion to refer for indictment." The magistrate judge construed the motion as a civil rights complaint under 42 U.S.C. § 1983 and ordered Sensi to file an amended

complaint. Sensi complied and filed an amended complaint that expressly pled his claims under § 1983.

In the amended complaint, Sensi alleged that Detective Brian Broughton of the Martin County Sheriff's Office altered the search warrant and inventory list from the 2008 search to cover up the fact that evidence outside the scope of the warrant was seized. He alleged several people participated in the cover-up or allowed it to happen, specifically: (1) the original search warrant and affidavit were altered by Detectives Broughton and Patrick Colasuonno, including forging the signature of Judge Metzger; (2) after the search, Judge Metzger's signature was forged on an inventory list detailing the items seized in the search; (3) the Martin County Clerk's Office—under the direction of Marsha Ewing—did not maintain any record of the search warrant and affidavit, meaning only the Sheriff's Office had a copy; (4) Detective Broughton seized Sensi's only copy of the original warrant and inventory list, leaving him unable to prove the later forgeries; (5) Judge Metzger interfered with Sensi's federal prosecution by calling the presiding judge and stating that her signatures on the search warrant were authentic; and (6) the defense attorneys hired by Sensi—Richard Kibbey, Joshua Deckard, Robert Watson, and Edward Galante—did not meaningfully investigate the fraud or actively participated in it.

Nearly all of the alleged acts took place in 2012 or earlier. The only references made in the amended complaint to actions taking place after 2012 are responses—or failures to respond—to Sensi's requests for information about acts that took place in 2012 or earlier. For instance, Sensi alleges that Watson sent him a letter in 2013 to affirm that the copy of the warrant he faxed to Sensi in 2010 was authentic. Sensi also details letters he wrote to the Martin County Clerk's office until 2016, when he was informed that the Clerk's office did not have a copy of the warrant and affidavit. That merely confirmed what Ewing had told Sensi in 2011. Finally, Sensi alleged that Judge Metzger never responded to his 2013 requests for information.

Sensi sought a declaratory judgment that the warrant was invalid and the evidence should have been suppressed in his criminal case. He also asked the district court to force each defendant to admit their criminal conduct, and he sought money damages from all defendants except Judge Metzger.

The magistrate judge issued a report and recommendation ("R&R") recommending dismissal of Sensi's complaint under 28 U.S.C. § 1915A and § 1915(e). The R&R found that Sensi's claims were time-barred. The R&R further found that even if the claims were timely, they were barred by the

Preiser/Heck doctrine[1] and judicial immunity, and otherwise failed to state a claim for which relief could be granted.

The R&R was issued on May 18, 2017. It informed Sensi that he could object to the R&R "within fourteen days of receipt of a copy of the [R&R]." On June 5, having not received any objections from Sensi, the district court adopted the R&R. The next day the clerk docketed a motion for extension of time to object to the R&R. The motion indicated that Sensi had not received a copy of the R&R in his Tucson, Arizona prison until May 30, and that he filed the motion for an extension that same day. The district court denied the motion without issuing a written order.

Sensi filed a motion for reconsideration, arguing that his objections to the R&R should be considered because he received his copy of the R&R the day before the deadline to file objections and promptly asked for an extension. Sensi attached the objections to the R&R he would have filed had his motion for an extension been granted. The district court denied the motion for reconsideration without issuing a written order.

Sensi appealed.

[1] The holdings of Preiser v. Rodriguez, 411 U.S. 475, 93 S. Ct. 1827 (1973), and Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994), "specif[y] that a prisoner cannot use § 1983 to obtain damages where success would necessarily imply the unlawfulness of a (not previously invalidated) conviction or sentence." Wilkinson v. Dotson, 544 U.S. 74, 81, 125 S. Ct. 1242, 1248 (2005) (emphasis removed).

II.

As an initial matter, Sensi challenges whether his complaint should have been subject to review under 28 U.S.C. § 1915A, which generally covers prisoner suits against government officials, or 28 U.S.C. § 1915(e), which covers in forma pauperis ("IFP") prisoner suits. Sensi correctly points out that he paid the filing fee in district court, meaning he did not proceed IFP. While the R&R correctly laid out the standard under § 1915A for dismissal for failure to state a claim, it later made multiple references to §1915(e). Ultimately, the R&R recommended dismissing the amended complaint because it was time-barred, and because it failed to state a claim upon which relief can be granted. These are valid bases for dismissing a complaint under §1915A, see Leal v. Ga. Dep't of Corr., 254 F.3d 1276, 1278–79 (11th Cir. 2001) (per curiam), so we will review the district court's decision under § 1915A.

III.

We review de novo a district court's dismissal of a § 1983 complaint for failure to state a claim under § 1915A. Id.

Section 1915A requires screening of any "civil action in which a prisoner seeks redress from a governmental entity or officer or employee." 28 U.S.C. § 1915A(a). "On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint [] is frivolous,

malicious, or fails to state a claim upon which relief may be granted . . . ." Id. § 1915A(b); see also Bingham v. Thomas, 654 F.3d 1171, 1175 (11th Cir. 2011) (per curiam) ("A district court may dismiss sua sponte a complaint [under § 1915A] if it . . . fails to state a claim." (quotation omitted)). The standard employed in this screening is the same as the standard used for a motion to dismiss. Boxer X v. Harris, 437 F.3d 1107, 1110 (11th Cir. 2006). The facts alleged in the complaint are accepted as true, and the complaint will not be dismissed if it "include[s] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Jones v. Fla. Parole Comm'n, 787 F.3d 1105, 1106–07 (11th Cir. 2015) (quotation omitted). In conducting this analysis, we liberally construe pro se pleadings and hold them to a less stringent standard than counseled pleadings. Id.

IV.

Before turning to the merits of the dismissal, Sensi challenges the district court's order denying him an extension of time to object to the R&R.

We review the denial of a motion for an extension of time for an abuse of discretion. Lizarazo v. Miami-Dade Corr. and Rehab. Dep't, 878 F.3d 1008, 1010–11 (11th Cir. 2017). A request for an extension, made before the expiration of the deadline, should be granted where good cause is shown. See Fed. R. Civ. P. 6(b).

Here, the district court denied Sensi an extension when he indicated he received the R&R one day before the deadline to file objections. Under these circumstances, it is doubtful he could have prepared his objections in time. See, e.g., Thomas v. Evans, 880 F.2d 1235, 1243 (11th Cir. 1989) (noting the difficulties faced by a prisoner proceeding pro se in preparing court documents on a tight deadline). The district court did not explain its reasons for denying Sensi's motion. Rather, it issued a one-sentence, paperless order. On this record, it appears there was good cause for an extension, and the district court should have allowed it.

If the district court had allowed the proposed 30-day extension, Sensi could have filed his objections, and the court would have reviewed de novo those portions of the R&R to which Sensi objected. See Williams v. McNeil, 557 F.3d 1287, 1291 (11th Cir. 2009). It is not clear whether the district court ever considered Sensi's objections. Again, the order denying the motion for reconsideration was a one-sentence, paperless order.

Dismissal under § 1915A for failure to state a claim is renewed de novo. Leal, 254 F.3d at 1278–79. Here, Sensi's proposed objections are part of the record, so we are fully able to analyze whether Sensi has pled viable claims. Therefore we will now turn to the merits of the dismissal.

V.

A district court may properly dismiss a § 1983 complaint for failure to state a claim if the action would be barred by the applicable statute of limitations. See Jones v. Bock, 549 U.S. 199, 215, 127 S. Ct. 910, 920–21 (2007); see also Leal, 254 F.3d at 1279–80 (discussing conditions necessary for a sua sponte dismissal under § 1915A for time-barred claims). A § 1983 claim is governed by the forum state's statute of limitations for personal injury actions, which is four years in Florida. Chappell v. Rich, 340 F.3d 1279, 1283 (11th Cir. 2003) (per curiam). "To dismiss a prisoner's complaint as time-barred prior to service, it must appear beyond a doubt from the complaint itself that the prisoner can prove no set of facts which would avoid a statute of limitations bar." Hughes v. Lott, 350 F.3d 1157, 1163 (11th Cir. 2003) (alteration adopted and quotation omitted). "[T]he statute of limitations does not begin to run until the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." Lovett v. Ray, 327 F.3d 1181, 1182 (11th Cir. 2003) (per curiam) (quotation omitted).

Sensi's claims all accrued, at the latest, by 2012. The execution of the search warrant—and the allegedly fraudulent alteration—occurred in 2008. It was at that time that the Clerk's office, headed by Ewing, failed to record a copy of the warrant and affidavit. The claims against Sensi's former attorneys are all based on

actions that occurred before he was sentenced in federal court in 2012. Similarly, the alleged phone call from Judge Metzger to Sensi's sentencing judge happened just before the 2012 sentencing.[2] Because all of these claims are based on facts that were apparent to Sensi by January 2012, the 2017 complaint was filed outside the applicable four-year statute of limitations.

Sensi argues that limitations period should have been equitably tolled because the conspiracy was deliberately concealed from him while he diligently pursued his rights. "[E]quitable tolling allows a court to toll the statute of limitations until such a time that the court determines would have been fair for the statute of limitations to begin running on the plaintiff's claims." Arce v. Garcia, 434 F.3d 1254, 1261 (11th Cir. 2006). "Equitable tolling is appropriate when a movant untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." Id. (emphasis removed and quotation omitted). The general test for equitable tolling requires the party seeking tolling to show: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." Holland v. Florida, 560 U.S. 631, 649, 130 S. Ct. 2549, 2562 (2010) (quotation omitted).

[2] Sensi alleges this claim accrued in 2013, when Judge Metzger failed to respond to his formal requests for information. But it is the 2012 phone call, not this failure to respond, that forms the basis for Sensi's claims against Judge Metzger.

Sensi's argument for equitable tolling is undercut by his admission in the amended complaint that, by June 2010, he "realize[d] that a conspiracy involving the Martin County entities named herein as Defendants, was definitely in place." He also must have been aware of the basis for his claims in 2012, when he argued in federal court that the search warrant and inventory list had been altered after-the-fact. Sensi also knew of the 2012 phone call from Judge Metzger because he was informed in court by the sentencing judge. Taking Sensi's allegations as true, he knew of the facts giving rise to his claims by 2012 at the latest, and he has not shown what extraordinary facts prevented him from filing his case until 2017. Holland, 560 U.S. at 649, 130 S. Ct. at 2562.

Finally, Sensi argues his claims are timely under the continuing violation doctrine. The continuing violation doctrine permits a plaintiff to sue on an otherwise time-barred claim when additional violations of the law occur within the statutory period. See Hipp v. Liberty Nat'l Life Ins. Co., 252 F.3d 1208, 1221–22 (11th Cir. 2001) (per curiam). "The critical distinction in the continuing violation analysis is whether the plaintiff complains of the present consequence of a one time violation, which does not extend the limitations period, or the continuation of that violation into the present, which does." Lovett v. Ray, 327 F.3d 1181, 1183 (11th Cir. 2003) (per curiam) (alterations adopted and quotation omitted).

Sensi has not alleged additional violations of the law that occurred after 2012. As previously discussed, the alleged facts underlying Sensi's claims had all occurred by the time of his sentencing. At most, Sensi alleges that the defendants failed to respond to his requests for information after 2012, or sent responses that continued to deny illegal activity.[3] But these denials are not independent violations of the law, meaning Sensi has not alleged any continuing violations.

AFFIRMED.

[3] Most prominently, Sensi alleged that in 2016 the Martin County Clerk of Court informed him that the court hadn't maintained a copy of the search warrant and affidavit, but that merely confirmed what Ewing had told Sensi in 2011.