

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14093
Non-Argument Calendar

D.C. Docket No. 1:16-cv-24102-MGC

ALRA SALMON,

Plaintiff - Appellant,

versus

LARRY JONES,
P. JEAN-LOUIS,

Defendants - Appellees.

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

(October 2, 2019)

Before TJOFLAT, JORDAN and ROSENBAUM, Circuit Judges.

PER CURIAM:

Aira Salmon, proceeding *pro se*, appeals the dismissal of his complaint under 42 U.S.C. § 1983 for violation of his constitutional rights. On appeal, Mr. Salmon argues that the district court erred in dismissing his complaint as time-barred because the statute of limitations should have been equitably tolled. For the reasons stated below, we affirm.

On September 22, 1991, Mr. Salmon was arrested in Miami International Airport and was charged with grand theft under Fla. Stat. § 812.014(2)(e)(1). On December 11, 1991, Mr. Salmon pled guilty to grand theft and was later sentenced to one year in custody. At the time of his arrest, Mr. Salmon was serving a three-year probation sentence for possession of marijuana and his probation was revoked. He was sentenced to one year in custody for violation of his probation, which ran concurrently with his grand theft sentence. As a result of his conviction and probation revocation, Mr. Salmon was deported to Jamaica in 2011.

On September 23, 2016, five years after his deportation, Mr. Salmon filed a suit under 42 U.S.C. § 1983 against retired Miami-Dade Police Department Officers Larry Jones and Paul Jean-Louis stemming from his 1991 arrest and alleging violation of his constitutional rights. He asserted that on September 22, 1991, Officer Jones and Jean-Louis unlawfully arrested and detained at the Miami International Airport while he was traveling from Jamaica.

Mr. Salmon alleged that the officers searched his belongings and discovered an expired flight coupon for Pan Am, which had been in his possession and unused since he was last employed by Pan Am. He alleged that the officers confiscated and destroyed the original plane ticket that he bought. He also asserted that Officer Jones and Jean-Louis falsified the police report for the indictment and lied about the nature of his conduct.

Mr. Jean-Louis, as the sole defendant who appeared, moved to dismiss the complaint with prejudice based on the statute of limitations and other defenses. Mr. Salmon responded that his claims were not barred because equitable tolling applied. He alleged that he did not learn until 2011 that his deportation was a result of his conviction for grand theft of the Pan Am airline coupon and argued that he would have contested his illegal arrest had he known the full consequences.

The district court considered the equitable doctrine argument and ruled that Mr. Salmon had not acted with diligence in pursuing his constitutional claims. It therefore dismissed the case.

We review *de novo* the district court's grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6), accepting the allegations in the complaint as true and construing them in light most favorable to the plaintiff. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). We independently review the district

court's ruling concerning the applicable statute of limitations. *See Lovett v. Ray*, 327 F.3d 1181, 1182 (11th Cir. 2003).

The statute of limitations for a § 1983 claim is governed by the statute of limitations for a personal injury action in the state where the cause of action arose, which in this case is Florida. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007). Personal injury actions in Florida have a four-year statute of limitations. *See Fla. Stat. § 95.11(3)*. The statute of limitations begins to run from the date “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.” *Rozar v. Mullis*, 85 F.3d 556, 561–62 (11th Cir. 1996). In particular, the statute of limitations on a § 1983 claim seeking damages for a false arrest in violations of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process. *See Wallace*, 549 U.S. at 388.

Mr. Salmon's claims accrued in 1991 when he was detained pursuant to legal process. He was arrested, charged, and subsequently pled guilty to grand theft. Therefore, he should have pursued his false arrest claim within four years of 1991. Instead, Mr. Salmon filed his § 1983 action on September 26, 2016, which is 25 years after the alleged claim accrued. Thus, his claims are untimely under the statute of limitations.

Equitable tolling is “a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs.” *Wallace*, 549 U.S. at 396. In a § 1983 action, federal courts generally refer to state law for tolling rules, just as they do for the length of a statute of limitations. *See id.* at 395. Florida law allows for equitable tolling where “the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum.” *Williams v. Albertson 's, Inc.*, 879 So. 2d 657, 659 (Fla. Dist. Ct. App. 2004). Extraordinary circumstances include when the Dade County courthouse was closed due to a civil disturbance in Miami but does not extend to an attorney missing a deadline by a day because he had a personal emergency or could not fax his notice. *See id.*

Mr. Salmon argues that he was entitled to equitable tolling because he was unaware that his 1991 arrest and subsequent conviction led to him being deported. He proposes that the statute of limitations should start to run from the date that he found out that his deportation was due to his illegal arrest. According to his argument, the statute of limitation should be tolled until 2011.

Mr. Salmon’s arguments do not rise to the level of extraordinary circumstances necessary to apply the equitable tolling doctrine. Mr. Salmon does not allege that he was misled into not filing his claims sooner. Instead, he pled guilty to the offense of grand theft and let any claim stemming from his alleged illegal

arrest lay dormant until his deportation in 2011. He was not lulled into inaction by the state. Nor did he file his claims in a mistaken forum. He served his sentence and resumed his life in the United States until his deportation proceedings. It took five years after his deportation for Mr. Salmon to decide to pursue his claims stemming from his alleged illegal arrest in 1991. Thus, equitable tolling is not available to Mr. Salmon.

Even if we agreed with Mr. Salmon's argument and applied equitable tolling, the present action would still be untimely. Mr. Salmon claims that he found out about the alleged constitutional violation at the time of his deportation proceedings, which took place in 2011. But, the present action was not filed until September 2016, which is five years after Mr. Salmon was deported and allegedly learned of all his claims against the officers. Thus, even if his tolling argument had merit his claims would still be time-barred.

For these reasons, we conclude that the district court did not err in dismissing Mr. Salmon's complaint and affirm.

AFFIRMED.