[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13524
Non-Argument Calendar

D.C. Docket No. 0:19-cv-60858-FAM

STEVEN JUSTIN VILLALONA,

Plaintiff-Appellant,

versus

HOLIDAY INN EXPRESS & SUITES
SCOTT T. AMBROSE
PAUL CONDOLEO
JOSEPH DAMIANO
DONALD HARRIS, et al.,

Defendants-Appellees.

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

(September 2, 2020)

Before GRANT, LUCK, and FAY, Circuit Judges.

PER CURIAM:

Steven Villalona, a federal prisoner proceeding pro se, appeals the sua sponte dismissal of his action under 42 U.S.C. §§ 1983, 1985, and 1986, and *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for alleged violations of his Fourth Amendment rights. He argues that the district court erred in dismissing his complaint because it erroneously concluded that his claims were barred by the statute of limitations. We affirm in part and reverse in part.

I.

Villalona filed his civil rights action against Holiday Inn Express & Suites, members of a county law enforcement drug task force, and two agents with the Drug Enforcement Administration, alleging that they violated his Fourth Amendment rights. In his complaint, Villalona alleged the following facts. The Metro Broward Drug Task Force rented several rooms at the Holiday Inn Express & Suites in Fort Lauderdale, Florida, for the purpose of conducting undercover investigations into "drug organizations." On September 21, 2011, a confidential informant working with the task force invited Villalona to a room at the Holiday Inn, where a drug transaction was to take place. With the hotel's permission—and without a search warrant—task force officers installed audio and video equipment in the room where the meeting with Villalona was to take place. Meanwhile, the two DEA agents named in Villalona's complaint placed a GPS tracking device on

Villalona's vehicle and followed him as he traveled from Orlando to Fort Lauderdale.

Villalona arrived in Fort Lauderdale and met with the informant and a few other individuals in the hotel room. A few hours later, the informant gave Villalona the key to the hotel room and agreed that Villalona would stay overnight in the room while the informant and the other individuals got a different room for themselves. At approximately 3:00 a.m., after everyone else had left and Villalona was the sole occupant of the room, one of the task force detectives and one of the DEA agents entered the room to identify Villalona and search for contraband. When the detective and agent determined that Villalona did not have any outstanding warrants, he was released. The electronic surveillance equipment previously installed by the task force recorded Villalona's meeting with the informant and all the subsequent events in the hotel room that night.

Villalona alleged that the Holiday Inn and state task force officers violated his Fourth Amendment rights to be free from unreasonable searches by conspiring with each other to conduct undercover investigations in the hotel's rooms, and by searching the hotel room where he was staying. He further alleged that the DEA agents named in his complaint violated his Fourth Amendment rights by placing the GPS tracking device on his vehicle and following him, and by entering the hotel room to identify him. He sought money damages.

A magistrate judge screened Villalona's complaint under 28 U.S.C. § 1915A and issued a report and recommendation recommending that the district court dismiss the complaint for failure to state a claim. The magistrate judge concluded that Villalona's claims were barred by Florida's four-year statute of limitations because the events underlying his claims occurred on September 21, 2011, and Villalona did not file the complaint until March 27, 2019, seven years later.[1]

Villalona objected, asserting that although the surveillance and search occurred on September 21, 2011, his cause of action did not accrue until April 29, 2015, when the government provided him with the task force audio and video recordings in connection with discovery proceedings in his criminal case and he first became aware of the electronic surveillance. The district court affirmed and adopted the magistrate's report and recommendation, concluding that because it should have been apparent to Villalona that his rights were violated when the detective and DEA agent entered and searched his hotel room at 3:00 a.m., Villalona's cause of action accrued in September 2011. The court overruled Villalona's objection, explaining that any additional information that Villalona

[1] Although the district court indicated that Villalona filed suit in April 2019, his complaint is considered to have been filed on March 27, 2019, the date that he signed it. *See Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1286 (11th Cir. 2016) (a pro se prisoner's court filing is presumed to have been delivered to prison officials on the date that the prisoner signed it); *Garvey v. Vaughn*, 993 F.2d 776, 783 (11th Cir. 1993) (a pro se prisoner's § 1983 complaint is deemed filed on the date that it was delivered to prison officials).

subsequently learned regarding the defendants' conduct could support his claims but would not prolong the accrual of his action. Villalona now appeals.

II.

The Prison Litigation Reform Act requires that the district court review all complaints filed by prisoners against a governmental entity to determine whether the action is "frivolous, malicious, or fails to state a claim upon which relief can be granted; or seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(a), (b)(1)–(2). We review a district court's sua sponte dismissal for failure to state a claim under 28 U.S.C. § 1915A(b)(1) de novo, taking the allegations in the complaint as true. *See Jones v. Bock*, 549 U.S. 199, 215 (2007); *Leal v. Georgia Dep't of Corr.*, 254 F.3d 1276, 1279 (11th Cir. 2001). We also "review the district court's interpretation and application of statutes of limitations *de novo*." *Ctr. for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1334 (11th Cir. 2006) (citation omitted). We hold pro se pleadings to a less stringent standard than those drafted by attorneys and will liberally construe them. *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011).

Dismissal under § 1915A(b)(1) for failure to state a claim is appropriate if the prisoner's allegations, taken as true, show that his claims are barred by the applicable statute of limitations. *Jones*, 549 U.S. at 215. A district court may dismiss a prisoner's complaint sua sponte on this ground only if it appears "beyond

a doubt from the complaint itself that [he] can prove no set of facts which would avoid a statute of limitations bar." *Leal*, 254 F.3d at 1280.

Section 1983 provides a cause of action based on "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. "Both *Bivens* and § 1983 allow a plaintiff to seek money damages from government officials who have violated his Fourth Amendment rights." *Wilson v. Layne*, 526 U.S. 603, 609 (1999). Section 1985(3) provides a cause of action for victims of a conspiracy to deprive a person of the equal protection of the laws or equal privileges and immunities under the laws. 42 U.S.C. § 1985(3); *Childree v. UAP/GA CHEM, Inc.*, 92 F.3d 1140, 1146–47 (11th Cir. 1996). Section 1986 provides a cause of action against anyone who has "knowledge that any of the wrongs conspired to be done" under § 1985 "are about to be committed," and fails to prevent the commission of those wrongs, despite having the power to do so. 42 U.S.C. § 1986.

Claims under § 1983 and § 1985 are governed by the statute of limitations for personal injury actions in the state in which the cause of action arose. *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003). The same statute of limitations applies to a *Bivens* action as to a § 1983 action. *Kelly v. Serna*, 87 F.3d 1235, 1238 (11th Cir. 1996). For claims that originated in Florida, the statute of limitations period is four years. *Chappell*, 340 F.3d at 1283. In contrast, a claim under § 1986

must be brought within one year after the cause of action accrues. 42 U.S.C. § 1986.

Applying federal law, the statute of limitations for a civil rights action begins to run from the date that the cause of action accrues, which occurs when "the plaintiff has a complete and present cause of action" and "can file suit and obtain relief." *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (citations and quotation marks omitted). We have concluded that a § 1983 or § 1985 cause of action will not accrue until the plaintiff knows or should know (1) that he has suffered an injury that forms the basis of his action and (2) the identity of the person or entity that inflicted the injury. *Chappell*, 340 F.3d at 1283; *see Mullinax v. McElhenney*, 817 F.2d 711, 716–17 (11th Cir. 1987). To decide this issue, a court must first identify the injuries that the plaintiff allegedly suffered and then determine when the plaintiff could have sued for them. *Rozar v. Mullis*, 85 F.3d 556, 562 (11th Cir. 1996).

Here, the district court correctly concluded that Villalona's cause of action predicated on the entrance and search of his hotel room by law enforcement officers was untimely. With respect to his claims arising from this alleged violation, Villalona's cause of action accrued on September 22, 2011, when he became aware of the entry and search. Because Villalona did not file suit until March 27, 2019, and does not allege that any tolling provision applies, his claims

arising from this alleged violation under § 1983, § 1985, and *Bivens* are barred by Florida's four-year statute of limitations and his claim under § 1986 is barred by the statute's one-year statute of limitations.

But Villalona's complaint alleges two additional Fourth Amendment violations—the placement by local law enforcement of recording devices in the hotel room that he would later occupy and the placement of a tracking device onto his vehicle by DEA agents—that form distinct causes of action.[2] Villalona alleges that he was unaware of those violations until April 29, 2015. While his § 1986 claims would still have been barred by that statute's one-year limitations period, it does not "appear beyond a doubt from the complaint itself that [Villalona] can prove no set of facts which would avoid a statute of limitations bar" for his remaining claims. *Leal*, 254 F.3d at 1280. The district court therefore erred in dismissing as untimely Villalona's claims that the electronic surveillance violated his Fourth Amendment rights, without first determining when those causes of

[2] We decline to decide in the first instance whether Villalona has alleged facts stating a plausible claim for relief based on the placement and use of surveillance equipment on his car and in the hotel room that he occupied, or whether he could state such a claim if he were given an opportunity to amend his complaint. *See Leal v. Georgia Dep't of Corr.*, 254 F.3d 1276, 1280–81 (11th Cir. 2001) (declining to reach issues not addressed by the district court in its sua sponte dismissal); *see also* Fed. R. Civ. P. 15(a); *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991) (in most circumstances, a pro se plaintiff "must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice," at least where a more carefully drafted complaint might state a claim), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (en banc) (holding that the *Bank* rule does not apply to counseled plaintiffs).

action accrued. Accordingly, the district court's dismissal is affirmed in part and reversed in part, and the case is remanded for further proceedings.

AFFIRMED IN PART AND REVERSED IN PART.