

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-14754  
Non-Argument Calendar

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D.C. Docket No. 1:19-cv-04273-MHC

CASEY LUCZAK,

Plaintiff-Appellant,

versus

DAVID J. FARNHAM,  
THE FARNHAM LAW FIRM,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Georgia

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(January 8, 2021)

Before MARTIN, JORDAN and JILL PRYOR, Circuit Judges.

PER CURIAM:

Casey Luczak, proceeding *pro se*, appeals the *sua sponte* dismissal under 28 U.S.C. § 1915(e)(2)(B) of his legal malpractice complaint against David J. Farnham, Esq., and his law firm, The Farnham Law Firm (collectively, “Farnham”). On appeal, Luczak argues that the district court erred in dismissing his amended complaint as barred by the statute of limitations and determining that the statutory period was not tolled by fraud under O.C.G.A. § 9-3-96. After careful review, we affirm.

## I. BACKGROUND

In 2008, Luczak was charged in federal court in Nevada with committing wire fraud, in violation of 18 U.S.C. § 1343, and making a false statement, in violation of 18 U.S.C. § 1001. Luczak retained David J. Farnham, a Georgia attorney, and paid Farnham \$200,000 to represent him in the federal criminal action. Luczak ultimately pled guilty to the charges against him. In 2010, he was sentenced to 121 months’ imprisonment.

Since his conviction, Luczak has sued Farnham several times based on his legal representation. While incarcerated, Luczak filed two suits against Farnham—a *Bivens* action in the Northern District of West Virginia and a § 1983 action in the Northern District of Georgia. The suit filed in the Northern District of West Virginia was transferred to the District of Nevada, where it was dismissed in 2014 for failure to state a claim. The Northern District of Georgia suit was

dismissed in 2013 because it was duplicative of the suit filed in the Northern District of West Virginia.

After Luczak was released from prison in 2019, he filed this diversity action against Farnham, alleging legal malpractice and seeking \$3,230,000 in compensatory and punitive damages. In his complaint, Luczak alleged that Farnham had a conflict of interest and failed to represent Luczak zealously because David Farnham himself was engaged in wire fraud, the same crime for which Luczak was convicted, while representing Luczak. According to Luczak, Farnham also failed to identify a defect in the indictment related to the false statement charge. Luczak further alleged that Farnham stole \$80,000 Luczak had entrusted to him and additional money from Luczak's relatives by instructing them to wire funds to a bank account held in a deceased person's name.

After granting Luczak permission to proceed *in forma pauperis*, the district court *sua sponte* reviewed the complaint to determine whether it stated a claim for relief as required by 28 U.S.C. § 1915(e)(2). The court found that the statute of limitations for the claim began to run in 2010, when Luczak pled guilty and started serving his sentence. Because this action was filed nine years later in 2019, the court concluded it was barred by Georgia's four-year statute of limitations. Accordingly, the district court dismissed Luczak's complaint for failure to state a claim.

This is Luczak's appeal.

## II. STANDARD OF REVIEW

We review *de novo* a district court's *sua sponte* dismissal for failure to state a claim under § 1915(e)(2)(B)(ii), viewing the allegations in the complaint as true. *Bilal v. Driver*, 251 F.3d 1346, 1348–49 (11th Cir. 2001). We review a district court's application of the statute of limitations *de novo* as well. *NE 32nd St., LLC v. United States*, 896 F.3d 1240, 1243 (11th Cir. 2018). We hold *pro se* pleadings to a less stringent pleading standard than pleadings drafted by counsel. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

## III. DISCUSSION

In reviewing the district court's dismissal, we begin by discussing when the statute of limitations for Luczak's malpractice action against Farnham accrued and when it expired. We then address whether this action relates back to Luczak's previous suits against Farnham, such that this suit should be allowed to proceed. Finally, we review whether the limitations period for Luczak's claim against Farnham was tolled considering Luczak's allegation of continuing harm.

### A. The Statute of Limitations for Luczak's Claim Has Expired.

We agree with the district court that Luczak's claim for legal malpractice accrued in 2010 and the statute of limitations expired years before he filed this action in 2019. Under Georgia law, an action for litigation-related malpractice

accrues at the time of the “attorney’s breach of duty, that is, from the date of the alleged negligent or unskillful act.” *Cuffie v. Armstrong*, 843 S.E.2d 599, 603 (Ga. Ct. App. 2020) (internal quotation marks omitted).<sup>1</sup> The statute of limitations for legal malpractice actions in Georgia is four years.<sup>2</sup> *Plumlee v. Davis*, 473 S.E.2d 510, 513 (Ga. Ct. App. 1996). Because the statute of limitations bar is an affirmative defense, dismissal for failure to state a claim on statute of limitations grounds is appropriate only if it is apparent from the face of the complaint that the claim is time barred. *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004).

The complaint shows on its face that Luczak’s claim is barred by the statute of limitations. Farnham’s representation of Luczak ended when Luczak pled guilty in 2010. Luczak’s malpractice claim therefore accrued at that time and expired four years later in 2014. Although Luczak maintains that his claim did not accrue until he left prison, we disagree. Nothing in the record indicates that Farnham committed any wrong after 2010; thus, Luczak’s malpractice claim could not have

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<sup>1</sup> “Except in matters governed by the federal Constitution or by acts of Congress, federal courts in diversity cases must apply the law of the forum state, including its statute of limitations.” *Reisman v. Gen. Motors Corp.*, 845 F.2d 289, 291 (11th Cir. 1988). Georgia state law governs the statute of limitations in this case.

<sup>2</sup> Under Georgia law, a claim for legal malpractice may sound in tort or in contract. *Cuffie*, 843 S.E.2d at 603 (Ga. Ct. App. 2020). A malpractice action sounding in contract has a statute of limitations of four years; an action sounding in tort has a statute of limitations of two years. *Plumlee v. Davis*, 473 S.E.2d 510, 513 (Ga. Ct. App. 1996). The district court determined that the four-year statute of limitations governed Luczak’s claim. For the purposes of this appeal, we will make the same assumption.

accrued any later than 2010. The district court's dismissal for failure to state a claim because the statute of limitations had expired was proper.

**B. Luczak's Previous Suits Against Farnham Did Not Toll the Limitations Period for His Present Claim.**

Luczak contends that the statute of limitations does not bar his claim because he filed two earlier suits against Farnham, thus tolling the statute of limitations. Luczak is correct as a general matter that filing a lawsuit tolls the statute of limitations on the claim asserted. *See Brown v. State Farm Mut. Auto. Ins. Co.*, 529 S.E.2d 439, 440 (Ga. Ct. App. 2000). However, this tolling lasts only as long as the lawsuit remains pending. *See Chinn v. Maxwell*, 316 S.E.2d 546, 547 (Ga. Ct. App. 1984). We accept that the limitations period on Luczak's claim was tolled while his earlier actions filed in the Northern District of Georgia and the District of West Virginia were pending, but the limitations period began to run again once these actions were dismissed in 2013 and 2014, respectively. Even assuming there was tolling while these actions were pending, the four-year limitations period nevertheless elapsed several years ago. Luczak's previous lawsuits thus do not allow this case to proceed.

**C. Luczak's Allegations of Ongoing Harm Did Not Toll the Statute of Limitations.**

Luczak also argues that the statute of limitations was tolled because Farnham's actions "continued well past the original 4-year statute of limitation."

Appellant’s Br. at 7. Liberally construed, we understand Luczak’s argument to be that the statute of limitations should be tolled because Farnham engaged in fraud, which prevented him from discovering the wrong earlier.<sup>3</sup>

The statute of limitations in legal malpractice actions may be tolled by fraud. *Shores v. Troglin*, 580 S.E.2d 659, 660–61 (Ga. Ct. App. 2003). Where, as here, the plaintiff alleges that the fraudulent act “debarred or deterred” him from bringing the action earlier, the period of limitation runs from the plaintiff’s discovery of the fraud. O.C.G.A. § 9-3-96. Whether and to what extent the limitations period is tolled depends on whether the gravamen of the underlying claim is fraud. *See Hunter, Maclean, Exley, & Dunn, P.C., v. Frame*, 507 S.E.2d 411, 413 (Ga. 1998). Where the underlying claim is fraud, the limitations period is tolled until the fraud is discovered or should have been discovered by a plaintiff exercising ordinary care and diligence. *Id.* But, when the gravamen of the underlying claim is not fraud, the limitations period may be tolled only upon a showing of a “separate independent actual fraud involving moral turpitude” that deterred the plaintiff from filing suit, and the plaintiff must show the defendant

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<sup>3</sup> There is no continuing harm or continuing relationship exception that tolls the statute of limitations for legal malpractice claims under Georgia law. *Duke Galish, LLC v. Arnall Golden Gregory, LLP*, 653 S.E.2d 791, 793 (Ga. Ct. App. 2007). Therefore, if this was what Luczak meant to argue, the argument fails.

acted intentionally to conceal information. *Id.* (internal quotation marks omitted); *see also Shores*, 580 S.E.2d at 661.

Here, the gravamen of Luczak's complaint is that Farnham committed malpractice. As a result, to obtain tolling, Luczak must have alleged that a separate actual fraud involving moral turpitude deterred him from filing this malpractice action and that Farnham acted intentionally to conceal the separate fraud. Luczak has made no such allegation. His complaint focuses on Farnham's alleged malpractice during its representation of him from 2008 to 2010, and he does not allege that Farnham committed another fraud that deterred him from filing this malpractice action. Without a separate act of fraud, the statute of limitations on Luczak's claim was not tolled, and the district court's dismissal on statute of limitations grounds remains proper.

#### IV. CONCLUSION

The district court did not err in determining that Luczak's legal malpractice complaint was time barred and that Georgia's tolling statute did not apply. Luczak filed his 2019 complaint beyond the statute of limitations for his legal malpractice claims arising out of conduct in 2010 and has not alleged sufficient facts to show that his claim was tolled by fraud.

**AFFIRMED.**