[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-12567

Non-Argument Calendar

CARLOS H. HENRIQUEZ,

Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF REVENUE,
STATE OF GEORGIA,
COMMISSIONER, GEORGIA DEPARTMENT OF REVENUE,
in their official capacity,
ANN RAINES WILLIAMSON,
JOSHUA K. WAITES, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:20-cv-03901-WMR

Before JILL PRYOR, BRANCH, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Plaintiff, proceeding *pro se*, appeals the district court's order dismissing his Title VII, § 1983, and Privacy Protection Act ("PPA") claims as barred by the statute of limitations. Plaintiff also appeals the district court's denial of his fourth motion to amend his complaint. Having reviewed the record and the briefing submitted by the parties, we affirm.

BACKGROUND

This case arises from Plaintiff's employment with the Georgia Department of Revenue ("Department"). Plaintiff, a naturalized United States citizen[1] who was born in Colombia, worked as a revenue agent at the Atlanta regional office of the Department from December 2010 to May 2016. According to Plaintiff, he was the "only Hispanic American" out of approximately 45 employees who worked in the Department's Atlanta office during that time frame.

Plaintiff claims he was treated worse than his African American or white coworkers while he worked for the Department, that

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[1] Plaintiff has legally resided in the United States since 1982.

he was terminated in May 2016 in retaliation for filing an EEOC charge against the Department, that an employee of the Department thereafter instigated an unlawful search of his home and seizure of his computer in July 2016, and that he subsequently was maliciously prosecuted on charges of computer invasion of privacy based on false sworn statements provided by the same Department employee. Plaintiff filed the present suit on September 21, 2020, asserting claims for race and national origin discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, claims for unreasonable search and seizure, due process violations, and malicious prosecution under 42 U.S.C. § 1983, and a claim under the PPA based on Defendant's search and seizure of work product materials from Plaintiff's computer.

As described in the complaint, Plaintiff's Title VII discrimination and retaliation claims are based on his alleged mistreatment at work beginning on April 30, 2014, when Lisa Meek became his supervisor, and on his subsequent termination in May 2016. Plaintiff claims Meek had negative beliefs about Hispanic people, and that as a result she treated him less favorably than his coworkers who were not Hispanic. The alleged mistreatment included verbal abuse, excessive criticism, unwarranted discipline and reprimands, and negative performance reviews. Meek supervised Plaintiff until she was promoted to a regional office manager position in August 2015, at which time Kathleen Campbell undertook Plaintiff's supervision. Plaintiff claims Campbell shared Meek's unfavorable opinion of Hispanic people, and that she continued the pattern of

discriminatory treatment for the remainder of his term of employment.

Between 2014 and 2016, Plaintiff complained multiple times to Department EEO manager Veronica Peeples and to human resources director Anne Williamson about Meek and Campbell's discriminatory conduct. He asserts that his complaints were not investigated. Plaintiff made several requests to be assigned to a different supervisor or to have Meek and Campbell "recused" from participating in his performance reviews, but those requests were denied. Plaintiff's internal appeals of his reprimands, discipline, and negative performance reviews also were denied. Plaintiff claims that he advised EEO manager Peeples in late April 2016 of his decision to file an EEOC charge concerning the alleged discrimination and that he was terminated shortly thereafter.

Pertinent to the present Title VII claims, Plaintiff filed an EEOC charge on June 17, 2016 alleging race and national origin discrimination and retaliation in violation of Title VII. He amended the charge on June 22, 2016 to correct errors, and he filed a second charge on July 6, 2016 to add allegations he had omitted from the first charge. Plaintiff subsequently received a right to sue notice from the EEOC dated September 27, 2016, which states:

> This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your**

> **receipt of this notice**; or your right to sue based on this charge will be lost.

Plaintiff's PPA claims are based on the search and seizure of his computer. Plaintiff's § 1983 claims are based on the search of his home and seizure of his computer in July 2016 and on his subsequent arrest and prosecution on state criminal charges of computer invasion of privacy. As for the factual basis of these claims, Plaintiff alleges that Department employee Brian Crisp[2] falsely accused him of using his computer to access confidential financial and personal information about taxpayers, and that Crisp's false statements were then used to obtain a search warrant. When the search warrant was executed on July 1, 2016, officers seized Plaintiff's computer and hard drive, which Plaintiff claims contained personal work product, including music composed by his wife and written material he and his wife planned to use for a book they were writing, as well as Plaintiff's evidentiary notes concerning the discrimination he experienced while working for the Department. Plaintiff argues there was no probable cause for the search or for the seizure of his computer and hard drive.

Plaintiff claims he was unable to secure the return of his computer until July 30, 2020, despite multiple inquiries to Defendant. According to Plaintiff, the computer was damaged while in Defendant's possession and, consequently, he lost his and his wife's work product that was stored there.

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[2] Crisp was an agent with the Department's Office of Special Investigations.

About a year after the search and seizure described above, on April 16, 2017, Plaintiff was arrested. Plaintiff claims he was arrested pursuant to an arrest warrant that was issued based on Crisp's false statements made in an affidavit on April 11, 2017. After his arrest, Plaintiff was taken to the Hall County Jail. He states in his complaint that he knew from the arresting officer's statements and the warrant that he was being arrested for unlawfully obtaining "taxpayer information with the intention of distributing it." Plaintiff alleges further that he was advised at the jail that his charged offense was computer invasion of privacy—specifically, unlawfully accessing taxpayer information with the intent to distribute it.

Plaintiff's wife posted bond for him on April 16, 2017, the same day he was arrested, and he was released from jail the next day. Plaintiff argues he was not released on the same timeline as non-Hispanic arrestees in the Hall County jail who posted bond. According to Plaintiff, he was told he could not be released until jail authorities obtained clearance from US immigration.

A criminal accusation was filed against Plaintiff on December 14, 2017, asserting three counts of computer invasion of privacy in violation of Georgia law. Although Plaintiff now claims that his prosecution was not based on probable cause, he acknowledges that he nonetheless pled guilty to a reduced charge and began serving his sentence (consisting of one year of probation, a fine, and community service) on September 19, 2018, which date constitutes the date that his criminal case is deemed to have concluded for purposes of his § 1983 malicious prosecution claim. Plaintiff asserts

that he pled guilty because he was afraid a Hall County jury would be prejudiced against him on account of his ethnicity and he wanted to avoid further reprisals by Defendant.

Plaintiff filed the original complaint in this case on September 21, 2020. He subsequently filed an amended complaint, followed by the now operative second amended complaint. Defendants moved to dismiss the claims asserted in the second amended complaint on numerous grounds. Plaintiff responded with motions to file a third and a fourth amended complaint.[3] The motions were referred to a Magistrate Judge, who issued a Report and Recommendation ("R&R") concluding that Plaintiff's claims should be dismissed as untimely and his motion to amend denied as futile.

The Magistrate Judge noted in the R&R that Plaintiff's complaint was filed well beyond the 90-day deadline from the EEOC's notice of right to sue applicable under Title VII, more than four years after the search of his house and seizure of his computer, more than three years after his arrest and release on bond, and more than two years after the conclusion of his criminal case. As such, the Magistrate Judge determined that all of Plaintiff's claims were barred under the governing statutes of limitations. Further, the Magistrate Judge identified no allegations in the complaint that would support equitable tolling of the limitations period as to any of Plaintiff's claims. Finally, the Magistrate Judge concluded that

[3] Plaintiff ultimately withdrew his motion to file a third amended complaint and advised the district court that he was relying solely on his fourth amended complaint.

Plaintiff's proposed third and fourth amendments to the complaint would be futile because the amendments did not fix the fundamental statute of limitations issue with his claims.

Plaintiff filed timely objections to the R&R, in which he argued that he was entitled to equitable tolling because he did not have access to his evidentiary notes concerning the alleged discrimination after his computer was seized and because, although Plaintiff knew he was injured when his home was searched in July 2016 and when he was arrested and prosecuted in 2017 and 2018, he did not know the cause of the injury until he retrieved certain documents from his criminal attorney on September 30, 2019. The district court overruled Plaintiff's objections, adopted the Magistrate Judge's R&R, and dismissed all of Plaintiff's claims, explaining that (1) it was clear from Plaintiff's complaint that his claims were filed outside the applicable statutes of limitations and (2) there was no viable basis for applying equitable tolling as to any of the claims. The court also denied Plaintiff's motions to amend his complaint.

Plaintiff appeals the district court's rulings on the motion to dismiss and the motion to amend. Regarding the dismissal, Plaintiff argues on appeal that equitable estoppel should apply (1) to his Title VII claims—because he could not file those claims until he retrieved his computer and evidentiary notes and (2) to his § 1983 claims—because he could not file those claims until he reviewed certain documents he retrieved from his criminal attorney on September 30, 2019 when he discovered that the July 2016 search of his home and seizure of his computer, followed by his arrest and

prosecution, were premised on false statements. As for his PPA claim, Plaintiff argues that the limitations period should be four years, not the two-year period that the magistrate judge applied, and that this time period should be further extended because of the COVID pandemic that began in March 2020. Plaintiff also argues that the district court erred by denying his fourth motion to amend.

We are unpersuaded by these arguments and, for the reasons discussed below, we affirm the district court's dismissal of Plaintiff's claims and its denial of his motion to amend.

DISCUSSION

I. Standards of Review

This Court reviews *de novo* the district court's "interpretation and application of a statute of limitations." *See Foudy v. Indian River Cnty. Sheriff's Off.*, 845 F.3d 1117, 1122 (11th Cir. 2017). When it is apparent from the face of a complaint that the claims asserted therein are time-barred, the complaint is subject to dismissal pursuant to Rule 12(b)(6). *See United States v. Henco Holding Corp.*, 985 F.3d 1290, 1296 (11th Cir. 2021). We generally review the denial of a motion to amend for abuse of discretion, "but we review the underlying legal conclusion that an amendment would be futile *de novo*." *Wade v. Daniels*, 36 F.4th 1318, 1328 (11th Cir. 2022).

II. Dismissal of Plaintiff's Claims as Time-Barred

As discussed above, Plaintiff's amended complaint includes claims for employment discrimination and retaliation asserted under Title VII, § 1983 claims based on various alleged constitutional

violations related to a search and seizure conducted at Plaintiff's home and Plaintiff's subsequent arrest and prosecution on charges of computer violation of privacy, and a PPA claim arising from the seizure of work product materials on Plaintiff's computer. For the reasons discussed below, the district court correctly determined that all these claims are time-barred and that dismissal of Plaintiff's complaint pursuant to Federal Rule 12(b)(6) was thus warranted.

A. Plaintiff's Title VII Claims

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to discriminate against an employee because of the employee's "race . . . or national origin" or to retaliate against an employee for opposing such discrimination. 42 U.S.C. §§ 2000e-2(a)(1), 2000e-3(a). To assert a claim under Title VII, a plaintiff first must file a charge with the EEOC within 180 days of the alleged discrimination or retaliation. *Id.* § 2000e-5(e)(1). The EEOC then has an opportunity to investigate and decide whether to litigate the charge on the plaintiff's behalf. *See id.* § 2000e-5(f)(1). If the EEOC decides not to litigate the charge, it notifies the plaintiff of that decision in what is commonly referred to as a notice of the plaintiff's right to sue. *See id.* To file a timely Title VII claim, the plaintiff must file suit within 90 days of receiving the EEOC's notice. *Id.* *See also Santini v. Cleveland Clinic Fla.*, 232 F.3d 823, 825 (11th Cir. 2000) ("Title VII . . . actions may not be brought more than 90 days after a complainant has adequate notice that the EEOC has dismissed the Charge.").

Plaintiff alleges in his complaint that he filed an EEOC charge in June 2016 and received a notice of right to sue from the EEOC around the time the notice was issued on September 27, 2016. As noted above, that notice stated in bold print that any lawsuit based on the EEOC charge had to be filed with 90 days of receipt of the notice. Plaintiff chose to ignore that notice, waiting almost four years to initiate a lawsuit asserting his Title VII claims, which action was filed on September 21, 2020. That is well beyond the 90-day time limit that applies under Title VII. *See Santini*, 232 F.3d at 825.

It is true that the 90-day limitations period applicable to Title VII claims can be subject to equitable tolling in an appropriate case. *See id.* Equitable tolling is applied sparingly, however, and it requires the plaintiff to show both that he pursued his rights "diligently" and that "some extraordinary circumstance" prevented his timely filing. *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 971 (11th Cir. 2016) (en banc) (quotation marks omitted). Plaintiff's allegations foreclose a finding of diligence here because he admits that he received the EEOC's notice of his right to sue shortly after the notice was issued in September 2016 but that he did not file this action asserting his Title VII claims until nearly four years later in September 2020.

Plaintiff nevertheless claims equitable tolling is warranted because his computer and evidentiary notes had been earlier seized in July 2016 and because—four months after the expiration of this 90-day deadline to file a lawsuit—he was arrested on charges of

computer invasion. But Plaintiff does not explain how either of those circumstances prevented him from timely asserting his Title VII claims. Further, Plaintiff undoubtedly was aware of the facts underlying his Title VII claims because he described those facts in the EEOC charge he filed in June 2016. He was not required to submit evidence to support his claims at the pleading stage, and there is no reason that his civil and criminal cases could not have proceeded at the same time. *See* Fed. R. Civ. P. 8(a)(2) (stating that a complaint should contain a "short and plain statement . . . showing that the pleader is entitled to relief"). Plaintiff's argument that he feared retaliation in his criminal case if he filed a Title VII complaint is insufficient to invoke equitable tolling as a matter of law. *See Carter v. West Pub. Co.*, 225 F.3d 1258, 1266 (11th Cir. 2000) ("Plaintiffs' purported fear of retaliation . . . is not a ground for equitable tolling. Otherwise, the doctrine of equitable tolling would effectively vitiate the statutory time requirement because an employee could defer filing indefinitely so long as she had an apprehension about possible retaliation." (citations omitted)).

In short, Plaintiff has not alleged facts showing that he "pursu[ed] his rights diligently" but was prevented by "some extraordinary circumstance" from asserting his Title VII claims within the applicable 90-day time period. *See Villarreal*, 839 F.3d at 971. On the contrary, Plaintiff's own allegations clearly establish that he could have filed suit within 90 days of receiving the EEOC's September 27, 2016 right to sue notice, but that he simply chose not to do so. "Equitable tolling is inappropriate when a plaintiff did not file an action promptly or failed to act with due diligence." *Bost*

v. Fed. Express Corp., 372 F.3d 1233, 1242 (11th Cir. 2004). That is the case here.

B. Plaintiff's § 1983 Claims

Section 1983 provides a cause of action for private citizens against state actors who violate their constitutional rights. *See* 42 U.S.C. § 1983. To prevail on a § 1983 claim, a plaintiff must show (1) that he was deprived of a right secured by the Constitution or laws of the United States (2) by a person acting under color of state law. *See Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1276–77 (11th Cir. 2003). Constitutional claims brought under § 1983 "are tort actions, subject to the statute of limitations governing personal injury actions in the state where the § 1983 action has been brought." *Powell v. Thomas*, 643 F.3d 1300, 1303 (11th Cir. 2011) (quotation marks omitted). In Georgia, where Plaintiff brought this action, the applicable statute provides for a two-year time period in which to file suit. *See* O.C.G.A. § 9-3-33.

While federal courts look to state law for the length of the limitations period, "the time at which a § 1983 claim accrues is a question of federal law." *McDonough v. Smith*, 139 S. Ct. 2149, 2155 (2019) (quotation marks omitted). Under federal law, accrual generally occurs "when the plaintiff has a complete and present cause of action." *Id.* (quotation marks omitted). Stated another way, a claim under § 1983 claim accrues "when the plaintiff can file suit and obtain relief." *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (quotation marks omitted). *See also Brown v. Ga. Bd. of Pardons & Paroles*, 335 F.3d 1259, 1261 (11th Cir. 2003) (explaining that the limitations

period on a § 1983 claim begins to run when the "facts supporting the [claim] are or should be reasonably apparent to the plaintiff").

As described in the complaint, Plaintiff's § 1983 claims are predicated on: (1) an unreasonable search and seizure and due process violation that occurred at Plaintiff's home on July 1, 2016, (2) Plaintiff's arrest on April 16, 2017 based on false statements made by Department employee Crisp a few days prior to the arrest, (3) an equal protection violation that occurred when Plaintiff was not immediately released from jail after bond was posted on April 16, 2017, and (4) a malicious prosecution in Plaintiff's criminal case, which case concluded on September 19, 2018 when Plaintiff was sentenced pursuant to a negotiated plea agreement. Each of these claims has a different accrual date, depending on the type of claim asserted and the date of the alleged constitutional violation. *See McDonough*, 139 S. Ct. at 2156, 2159 (explaining that a § 1983 claim alleging unlawful arrest accrues when the arrestee is "detained pursuant to legal process" while the § 1983 analogue to a malicious prosecution claim accrues when a criminal proceeding terminates in the plaintiff's favor) (quotation marks omitted). But the allegations of the complaint make clear that all of Plaintiff's § 1983 claims accrued more than two years prior to September 21, 2020, the date Plaintiff filed this action. Specifically, the search and seizure about which Plaintiff complains occurred more than four years prior to the filing date of the complaint, Plaintiff's arrest and allegedly delayed release from jail occurred more than three years prior to the

filing date, and Plaintiff's criminal case terminated more than two years prior to this filing date.[4]

Moreover, Plaintiff's stated reasons for excusing the tardy filing of his § 1983 claims do not constitute valid grounds for equitably tolling or for determining that those claims did not accrue until sometime after the relevant events described above—namely, the search and seizure in July 2016, Plaintiff's arrest and the delay in releasing him from jail in 2017, and Plaintiff's prosecution in a criminal case that concluded on September 19, 2018. In support of his equitable tolling and delayed accrual argument, Plaintiff claims he did not know about the alleged fraud in connection with the search and arrest warrants—which issued in 2016 and 2017, respectively, and which resulted in Plaintiff's criminal prosecution that concluded in 2018—until he picked up the documents that involved his criminal case from his attorney on September 30, 2019. As the district court pointed out, Plaintiff fails to identify the documents he retrieved from his attorney or what the documents

[4] An essential prerequisite for a malicious prosecution claim is a showing that the criminal proceeding has terminated in the plaintiff's favor. *See Luke v. Gulley*, 975 F.3d 1140, 1144 (11th Cir. 2020) (noting that a plaintiff must allege favorable termination to state a claim for malicious prosecution). Here, Plaintiff ultimately pled guilty to a reduced charge and was sentenced on that charge. Further, Plaintiff's complaint does not assert that his criminal proceeding terminated in his favor and, indeed, he acknowledges in his brief before this Court that his criminal case did not terminate in his favor. Nonetheless, for purposes of this opinion, and consistent with that same assumption reflected in the magistrate judge's R&R and district court's order, we will likewise assume that Plaintiff's criminal proceeding terminated in his favor.

revealed about the fraud Plaintiff alleges. Nor does Plaintiff explain why he did not have access to those documents during his criminal case, or, more obviously, why he did not attempt to retrieve these documents sooner.

Moreover, Plaintiff's claim that he did not know about Crisp's false accusations until 2019 is belied by the facts asserted in his complaint. Plaintiff alleges in the complaint that at the time the search warrant was executed at his home on July 1, 2016, he knew there was no legal basis for it and that he believed then that the search was racially motivated and done for the purpose of confiscating Plaintiff's evidentiary notes documenting the discrimination he experienced while working for the Department. Likewise, Plaintiff states in the complaint that he knew at the time of his arrest and when the charges were filed against him that the arrest was unlawful and that he had been charged with crimes he did not commit. Finally, Plaintiff acknowledges in his complaint that it was explained to him while he was in jail that he was being charged with "computer invasion" and unauthorized disclosure of confidential taxpayer information: charges Plaintiff believed at the time to be false and unwarranted.

As with his Title VII claims, Plaintiff has offered no satisfactory, legally cognizable explanation for his failure to file his § 1983 claims within the applicable statute of limitations. Accordingly, we affirm the district court's dismissal of these claims as being time-barred.

C. Plaintiff's PPA Claim

In addition to his Title VII and § 1983 claims, Plaintiff also claims a violation of the federal Privacy Protection Act, which we have referred to in this opinion as the PPA. The PPA prohibits government officers from "search[ing] for or seiz[ing] any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication." 42 U.S.C. § 2000aa(a). Plaintiff argues that Defendants violated the PPA when, on July 1, 2016, they seized material stored on his computer that he and his wife were intending to publish in a book.

Plaintiff acknowledges that his complaint was untimely as to this claim if it is deemed to have accrued when his computer was seized on July 1, 2016 and if the Georgia two-year statute of limitations applicable to personal injury claims applies to his PPA claim. Instead, he notes that a Georgia statue creating a civil claim for property damage has a four-year statute of limitations and argues that because this type of claim is the closest analogue to a PPA claim, it is this four-year limitation period that should be applied to his claim. He further argues that his PPA claim should not be deemed to have accrued on July 1, 2016—the date when his computer was seized—but on September 30, 2019—when he came to believe that Defendants had committed conspiracy and perjury—or even later—on January 7, 2021—when he learned that his hard drive had been destroyed while in Defendants' custody.

Concluding that Plaintiff's PPA claim had accrued on July 2016—the date his computer was seized—and that the Georgia two-year statute of limitations applicable to personal injury claims should be applied to PPA claims, the magistrate judge's R&R recommended that the PPA claim be dismissed as time-barred. The district court subsequently dismissed the PPA claim on this ground.[5] Plaintiff argues on appeal that the district court erred when it dismissed his PPA claim as time barred, again contending that a four-year statute of limitations should be applied or, alternatively, that even with a two-year limit, his PPA claim should be deemed to have accrued later than the date on which his computer was seized.

We agree with the magistrate judge's recommendation and conclude that a PPA cause of action accrued in July 2016, that a two-year statute of limitations applies to that claim, and that

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[5] In so ruling, the district court reasoned that it was unnecessary to decide which statute of limitations applied because the PPA claim was time-barred under either a four-year or a two-year statute of limitations. It is true that Plaintiff's objections to the magistrate judge's recommended ruling are hardly a model of clarity and he did not expressly explain in those objections why his PPA claim would be timely even with a four-year statute of limitation. Nevertheless, in his Objections, he does cite one of his earlier pleadings stating that it set out his explanation why the PPA claim would be timely were a four-year statute of limitation to be applied, and he repeats that argument on appeal. We will thus assume that he has preserved this argument. Further, deciding which statute of limitations applies to a PPA claim involves in this case a pure question of law. Accordingly, like the magistrate judge, we proceed to decide the question which limitation period—the two-year or the four-year period—should apply to Plaintiff's PPA claim.

Plaintiff's claim filed over four years later greatly exceeded that limitation period, meaning that the district court's dismissal on timeliness grounds is due to be affirmed.

1. Accrual of the PPA Claim

Federal law governs the accrual of a state statute of limitations when it is borrowed for a federal cause of action.[6] *See Kelly v. Serna*, 87 F.3d 1235, 1238–39 (11th Cir. 1996) ("Accrual of a cause of action under 42 U.S.C. § 1983 is a question of federal law."); *Rozar v. Mullis*, 85 F.3d 556, 561 (11th Cir. 1996) ("Federal law determines when a federal civil rights claim accrues."); *see also* 19 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4519 (3d ed. 2022) ("[F]ederal law usually has been held to govern the time of a claim's accrual, regardless of the source of the limitations period being applied by the court or the basis of the court's subject matter jurisdiction.").

Further, "[t]he general federal rule is that the 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." *Rozar*, 85 F.3d at 561–62 (internal quotation marks omitted and alterations adopted). Therefore, for a claim to accrue, plaintiffs "must know or have

[6] As discussed *infra*, the PPA having articulated no limitations period, we must apply the most analogous limitations period from Georgia, which is the state in which Plaintiff filed his federal lawsuit, as well as the state where the claim arose.

reason to know that they were injured, and must be aware of who inflicted the injury." *Id.* at 562.

Plaintiff argues that even if this Court adopts Georgia's two-year personal injury statute of limitations, his PPA claim is still not time barred because it did not accrue until either September 30, 2019—when Plaintiff began to believe Defendants committed conspiracy and perjury—or January 7, 2021, when Plaintiff learned that Defendants had destroyed a hard drive belonging to him. We find this argument to be unpersuasive, as Plaintiff acknowledges that he was aware that state agents had searched his home and seized his computer at the time the seizure occurred: July 1, 2016.

The act prohibited by the PPA is the unlawful "search[ing] or seiz[ing]" of work product: an act performed by state actors of which Plaintiff was well aware at the time it occurred. 42 U.S.C. § 2000aa(a). As to the September 30, 2019 date picked by Plaintiff, that he chose to wait over three years to obtain records from his attorney that further convinced him of the unlawfulness of the state actors' acts does not delay the accrual date of the claim, because a reasonable person would have known that he was injured by these state actors at the time of the search and seizure.

Moreover, Plaintiff's alternative argument that his PPA claim did not accrue until even later—in 2021—when he discovered that his hard drive had been destroyed also fails to persuade because a plaintiff does not need to know or "suffer the full extent of his injury before his cause of action accrues" but rather "a plaintiff must know or have reason to know that he was injured to some

extent." *Karantsalis v. City of Miami Springs*, 17 F.4th 1316, 1323 (11th Cir. 2021). Plaintiff's awareness of the conduct forming the basis of his PPA-related injury occurred in July 2016. Therefore, Plaintiff's PPA claim accrued at the same time.

2. The Applicable Georgia Statute of Limitations

Plaintiff's PPA claim having accrued in July 2016, the next question is what limitations period applies. The PPA makes no mention of the applicable limitations period. That being so, we must apply the limitations period in the statute's closest state-law analogue.[7] *See Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 414 (2005) ("To determine the applicable statute of limitations for a cause of action created by a federal statute, we first ask whether the statute expressly supplies a limitations period. If it does not, we generally borrow the most closely analogous state limitations period." (quotation marks omitted)).

Defendants argue that the Georgia two-year statute of limitations for actions alleging an injury to the person (O.C.G.A. § 9-3-

[7] In *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 377–81 (2004), the Supreme Court noted that "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after [December 1, 1990] may not be commenced later than 4 years after the cause of action accrues." *Id.* at 372 (quoting 28 U.S.C. § 1658(a)). Thus, for such statutes, a four-year statute of limitations applies. Because the PPA was not enacted after December 1, 1990, but instead was enacted ten years earlier—in 1980—§ 1658(a) does not apply, and we must therefore identify the most analogous state limitations statute.

33[8]) should apply to PPA claims. Defendants note that the law is well-settled that § 1983 claims alleging constitutional violations under the First and Fourth Amendments are subject to the statute of limitations for personal injury claims in the state where the § 1983 suit has been filed. Given that the PPA's purpose is to protect the First and Fourth Amendment rights of a person covered by that statute, Defendants contend that a PPA claim should be subject to the same rule.

Plaintiff disagrees, arguing that a Georgia four-year statute of limitations should apply given that there was "sized work product"[9] and damage to his property. Plaintiff does not cite to the specific Georgia statute he proposes, but the Court assumes he means § 9-3-32. Section 9-3-32 provides that "[a]ction for the recovery of personal property, or for damages for the conversion or destruction of the same, shall be brought within four years after the right of action accrues." We agree with Defendants' position.

To identify the most closely analogous state statute for purposes of borrowing a limitations period, "we first determine the essential nature" of the federal claim at issue. *See Clark v. Coats & Clark, Inc.*, 865 F.2d 1237, 1241 (11th Cir. 1989). To assess "the

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[8] O.C.G.A. § 9-3-33 provides that "actions for injuries to the person shall be brought within two years after the right of actions accrues …."

[9] The Court assumes that Plaintiff means "seized" work product, but is not absolutely certain about that as sometimes Plaintiff also uses the word "seized" in the same paragraph where he repeatedly refers to the property taken as "sized."

essential nature" of the federal claim for statute of limitations purposes, courts examine the "elements of the cause of action" and "Congress' purpose in providing it." *Wilson v. Garcia*, 471 U.S. 261, 268 (1985).

As to the elements of the PPA, the statute in pertinent part provides:

> (a) Work product materials
>
> Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast or other similar form of public communication . . . but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—
>
> (1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate . . . .

42 U.S.C. § 2000aa(a)(1).

Thus, the PPA makes it unlawful for a government official, in the course of investigating a possible criminal offense, to look

for or seize work product materials that the official reasonably believes were intended to be disseminated publicly—either in a book, newspaper, a public broadcast, or the like—unless there is probable cause to believe that the person possessing the materials has committed, or is committing, a criminal offense to which the materials relate.[10]

Examining these elements of the statute, the PPA is obviously addressing the interaction of the First and Fourth Amendments in connection with searches conducted during a criminal investigation that could well satisfy the Fourth Amendment's requirement that all governmental searches and seizures of an individual's property be reasonable, but that might, at the same time, implicate a putative publisher's First Amendment interest in not having those materials seized absent probable cause to believe that the latter has some connection to the crime being investigated.

A federal civil claim that a state official has violated one's First or Fourth Amendment is typically brought as a § 1983 action.[11]

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[10] Here, Defendants, looking for tax records of Georgia citizens that they believed Plaintiff had wrongfully taken and intended to use for unlawful purposes, conducted a search of his premises, ultimately seizing, perhaps among other things, Plaintiff's personal computer. Plaintiff avers that his wife is a gospel singer and he is minister and that there was work product contained in the computer relating to those endeavors that he and his wife intended to disseminate publicly.

[11] Section 1983 provides for civil liability against any person acting under color of state law who causes a person to be deprived of "any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983.

Indeed, § 1983 is the vehicle generally used to assert the violation of a plaintiff's civil rights by a state actor. *See Wilson*, 471 U.S. at 274 (listing some of the constitutional claims that have been made pursuant to § 1983). Section 1983, however, does not contain its own statute of limitations. That being so, in *Wilson*, the Supreme Court held that, to identify the statute of limitations applicable to a § 1983 action, one looks to the statute of limitations used for personal injury claims in the state where the federal action has been brought. 471 U.S. at 276.

With his PPA claim here, Plaintiff is likewise asserting—albeit indirectly—that a First Amendment right was violated through Defendants' seizure of his computer. It makes sense that Plaintiff's First Amendment-type claims under the PPA be treated in the same, way, for statute of limitations purposes, as would a First Amendment claim brought via § 1983.

Our conclusion that Georgia's two-year statute of limitations for personal injury claims should be adopted for the PPA is further supported by "Congress' purpose in providing" the PPA. *Wilson*, 471 U.S. at 268. We have consistently evaluated the purpose of a statute when determining the most analogous limitations period. *See Harrison v. Digital Health Plan*, 183 F.3d 1235, 1239 (11th Cir. 1999) (determining the proper Georgia limitations period to adopt for the Employee Retirement Income Security Act (ERISA) by considering Congress' purpose for enacting it); *Clark*, 865 F.2d at 1242 (determining the proper Georgia limitations period to adopt for Section 510 of ERISA by analyzing the primary purpose

of the statute through the use of a United States House of Representatives Committee Report).

The purpose behind the PPA, as set forth in the Senate Committee on the Judiciary's report, was to afford additional statutory protection to the First and Fourth Amendment rights of the press and related groups. *See* S. Rep. No. 96-874, at 4–5 (1980), *reprinted in* 1980 U.S.C.C.A.N. 3950, 3950–51, 1980 WL 13002. Specifically, Congress expressed its concern regarding the interference with privacy interests, not property interests, that arose out of the search and seizure of evidence belonging to those not under investigation. *Id.* Notably, Congress explained that the Supreme Court's decision in *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978), upholding the search and seizure of a student newspaper that was not itself under investigation of a crime, prompted the enactment of the PPA. *Id.* The "historical catalyst" for the PPA further bolsters our conclusion that Georgia's personal injury statute is the closest state analogue to the PPA. *See Wilson*, 471 U.S. at 276 (considering the historical catalyst for the Civil Rights Act of 1871 in order to determine the most closely analogous state limitations period to § 1983). Because the PPA stemmed from Congress' decision to enhance civil rights protections of journalists following *Zurcher*, it follows that the historical catalyst for the PPA provides additional support to our view of the PPA as a statute protecting civil liberties rather than property interests.

Our sister circuits have described the PPA as a statute protecting civil liberties rather than narrowly protecting property

interests. *See In re Young*, 141 F.3d 854, 860 (8th Cir. 1998) (describing the PPA as an example of Congress providing "statutory protection of individual liberties that exceed the Supreme Court's interpretation of constitutional protection"); *Citicasters v. McCaskill*, 89 F.3d 1350, 1355 (8th Cir. 1996) (describing the PPA as a "straightforward statutory scheme for protecting those engaged in information dissemination from government intrusion"); *Guest v. Leis*, 255 F.3d 325, 340 (6th Cir. 2001) (noting the PPA's Fourth Amendment origins). Commentators also share the broader civil-liberties-centric view of the PPA. *See* Patricia K. Bellia, *Federalization in Information Privacy Law*, 118 Yale L.J. 868, 881 (2009) (describing the PPA as one of "a number of federal information privacy statutes directly respond[ing] to judicial rulings on the contours of permissible official conduct"); Daniel J. Solove, *The First Amendment as Criminal Procedure*, 82 N.Y.U. L. Rev. 112, 130 n.98 (2007) (noting that "Congress responded to the [First Amendment protection] problem in the Zurcher case with the Privacy Protection Act"); Elizabeth B. Uzelac, Note, *Reviving the Privacy Protection Act of 1980*, 107 Nw. U. L. Rev. 1437, 1457 (2013) (noting "the apparent congressional intent [for the PPA] to protect activities ranging the full extent of the First Amendment"); Jenny Maynard, Comment, *Stop the Presses: Police Can Arrest Journalists on Their Own Whims with the Protection of Their Broad Probable Cause Defense to Retaliatory Arrest Claims*, 11 Wake Forest J.L. & Pol'y 757, 760 (2021) (noting that the Fourth Amendment protection of journalists is "further expanded" under the Privacy Protection Act).

We agree that the historical underpinnings of the PPA support interpreting the statute as protecting civil liberties rather than property interests. Plaintiff's contrary interpretation of the PPA fails because it asks us to focus too narrowly on the collateral property interest at stake in a PPA claim and overlook its broader constitutional context. In *Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987), the Supreme Court faced a similar state statute of limitations adoption question arising from employees' racial discrimination claims under 42 U.S.C. § 1981, among others, against their employer. The employees argued that the Court should adopt a state limitations period "applicable to suits for interference with contractual rights." *Goodman*, 482 U.S. at 661. The Court disagreed and held that § 1981 "has a much broader focus than contractual rights" and speaks to additional rights including the "personal rights to sue, to testify, and to equal rights under all laws for the security of persons and property." *Id.* For that reason, the Court concluded that a state personal injury limitations period is appropriate for § 1981 claims. *Id.* at 661–62. Like the employees' rebuffed argument in *Goodman*, Plaintiff's reasoning that we should adopt Georgia's limitations period applicable to property-related torts for PPA claims fails because it reflects too narrow an exposition of the essential nature of the PPA.

Although the issue of which state limitations period to use for the PPA has seemingly not been addressed by our sister circuits, one district court has examined the issue. In *Powell v. Tordoff*, 911 F. Supp. 1184, 1192 (N.D. Iowa 1995), the United States District Court for the Northern District of Iowa addressed the question of

which Iowa statute of limitations was most closely analogous the PPA and concluded that "it is apparent from the purpose of the PPA that the 'most analogous' state cause of action is not one for injuries to *property*, but one for injuries to personal rights." *Id.* Noting the report published by the Senate Committee on the Judiciary that described the purpose of the PPA and the *Zurcher* decision, the court concluded that "[i]t is obvious from this recitation of the purpose of the PPA that Congress's intent in passing the Act was not to provide a cause of action for the carrying away of *property*." *Id.* at 1193. Instead, "Congress's purpose was to provide special protections similar to but greater than those afforded by the First and Fourth Amendments and warrant procedures for the *privacy rights* of nonsuspects, particularly the press, in possession of documentary evidence." *Id.* We find the *Powell* court's reasoning persuasive.

The essential nature of the PPA, derived from its plain language, purpose, and historical catalyst, is to protect civil liberties. Under the Supreme Court's precedent in *Wilson*, a state's personal injury statute provides the closest analogue to a civil rights claim. Thus, it is the former's statute of limitations that we should apply to the PPA, and we do so here by using Georgia's two-year personal injury statute of limitations to determine the timeliness of Plaintiff's PPA claim. We conclude that Plaintiff's PPA claim was untimely and therefore was properly dismissed by the district court.

III. Plaintiff's Motion to Amend

In addition to the statute of limitations issues discussed above, Plaintiff argues on appeal that the district court erred by dismissing his complaint without giving him an opportunity to amend. "A district court's discretion to deny leave to amend a complaint is severely restricted by [Federal Rule 15], which stresses that courts should freely give leave to amend when justice so requires." *Woldeab v. DeKalb Cnty. Bd. of Educ.*, 885 F.3d 1289, 1291 (11th Cir. 2018) (quotation marks and citation omitted). "Where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." *Id.* (quotation marks omitted). However, a district court need not allow an amendment that would be futile. *See Garcia v. Chiquita Brands Int'l, Inc.*, 48 F.4th 1202, 1220 (11th Cir. 2022).

Plaintiff claims that his fourth amended complaint was "better organized and more concise" than his second amended complaint, and he argues that the district court abused its discretion by denying his motion to amend. But Plaintiff amended his complaint two times—once as of right and once with the permission of the court—before he filed the fourth motion to amend that is at issue in this appeal. And, as the district court correctly recognized, Plaintiff's amendment would have been futile because his fourth amended complaint includes essentially the same allegations as his second amended complaint and it does not fix the fundamental problem with his claims: they all are barred by the applicable

statute of limitations. Accordingly, the district court did not abuse its discretion by denying Plaintiff's motion to amend.

CONCLUSION

For the reasons stated above, we **AFFIRM** the district court's order dismissing Plaintiff's claims as untimely and denying his motion to file a fourth amendment complaint as futile.