[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-10344

Non-Argument Calendar

BRUCE MITCHELL NICHOLSON,

Plaintiff-Appellant,

versus

NATHAN SMOOTS,
S.A., in his individual and official capacity,
JOHN J. GEER III,
AUSA, in his individual and official capacity,
ANDRES DURANGO,
An FBI Special Agent,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:18-cv-00681-WKW-JTA

Before WILSON, BRASHER, and TJOFLAT, Circuit Judges.

PER CURIAM:

Bruce Mitchell Nicholson, *pro se*, appeals the dismissal of his *Bivens* action. *See Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999 (1971). He argues that the District Court for the Middle District of Alabama applied the wrong statute of limitations, that the statute of limitations should not have run from the date that officers detained him and collected a saliva sample because the officers lied to him about having a valid warrant, and that he was entitled to equitable tolling because he did not discover the warrant's invalidity until three years later. For the reasons discussed below, we affirm.

I.

On March 17, 2015,[1] Nicholson was approached by a Chilton County Sheriff's Deputy while on a walk. The deputy asked

---

[1] The facts of March 17, 2015, appear as stated in Nicholson's complaint, excluding the pleadings not entitled to the assumption of truth due to their

for Nicholson's name and identification, which Nicholson provided. The deputy told Nicholson he was wanted for questioning, frisked him, placed him in restraints, and transported Nicholson to his home. Upon arrival, they were met by FBI agents and other officers, who had searched Nicholson's home after obtaining consent from his father.[2]

FBI Special Agent ("S.A.") Nathan Smoots and another S.A. questioned Nicholson in the driveway.[3] They informed Nicholson that they were there to gather evidence. According to Nicholson, he requested to see their search warrant, but it was not provided to him. He then requested to contact his attorney, but was told that it would be futile to do so, and that if he wanted to contact his attorney he could do it from the county jail where he would be taken for failing to comply.

Nicholson's complaint alleged that S.A. Smoots, S.A. Durango, and the deputy intimidated and compelled him to consent to a buccal swab DNA test using threats and coercion.[4] Nicholson

---

conclusory nature. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950 (2009).

[2] They searched the home to see if Nicholson was present; this was not a search for evidence.

[3] This S.A. was later identified as S.A. Andres Durango.

[4] Nicholson claimed he was "intimidated by threat and coercion and an overwhelming concern for my [83-year old] father's obvious emotional trauma to the entire situation." Complaint, Doc. 1, at 4.

alleged that he was not read his Miranda rights[5] and was not told that he could refuse the swab.[6]

In December 2015, Nicholson was indicted by a federal grand jury in the Northern District of Alabama on six counts, including transportation with intent to engage in criminal sexual activity with a minor, traveling interstate to engage in illicit sexual conduct, and child pornography.[7] In the course of their investigation into Nicholson, the Assistant United States Attorneys (the "AUSAs") in the Northern District of Alabama referred a motion to compel a DNA sample to John Geer III, an AUSA in the Middle District of Alabama, where Nicholson was living at the time. A magistrate judge in the Middle District of Alabama issued the order to compel.[8] In August 2018, Nicholson filed a motion to suppress the DNA evidence obtained by the buccal swab,[9] but the District

---

[5] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

[6] Nicholson was not under arrest at the time and did not have the option to refuse the buccal swab because the FBI agents had a court order to obtain his DNA.

[7] The criminal case against Nicholson in the Northern District of Alabama is *United States v. Nicholson*, No. 2:15-cr-418-MHH-JHE.

[8] The DNA sample was used to confirm that Nicholson fathered twins with his 16-year-old stepdaughter.

[9] Nicholson argued that his consent to the buccal swab was not voluntary and was "illegally coerced through force, threat[,] and intimidation," and that Nicholson consented, in part, because his father, "who suffer[ed] from Alzheimer's, was panicking and confused and wandering about unsupervised at the scene," and Nicholson had a "dire fear that his father would be harmed if

Court for the Northern District of Alabama denied that motion. A jury in the Northern District of Alabama found Nicholson guilty on all counts in October 2018. He was sentenced to life in prison.[10]

Prior to his conviction, on July 5, 2018, Nicholson filed a *pro se* complaint in the District Court for the Middle District of Alabama against S.A. Smoots, AUSA Geer, and two John Doe defendants—the other S.A. and the sheriff's deputy.[11] He alleged that the following six violations of his constitutional rights, based on the facts above, occurred on March 17, 2015:[12]

I. Violation of his Fourth Amendment right against unlawful seizure when he was detained by the deputy and transported back to his house;

II. Violation of his Sixth Amendment right to counsel when S.A.s Smoots and Durango did not allow him to contact his attorney;

---

left unattended any longer." Mot. to Suppress, N.D. Ala. CM/ECF, Case No. 2:15-cr-00418-MHH-JHE, Doc. 85 at 2.

[10] Nicholson appealed his conviction, which this Court affirmed. *See United States v. Nicholson*, 24 F.4th 1341 (11th Cir. 2022), *cert. denied*, 142 S. Ct. 2795 (2022).

[11] Nicholson later amended his complaint to replace S.A. John Doe with S.A. Andres Durango as a defendant in the complaint.

[12] Nicholson's complaint did not mention *Bivens*, but the District Court for the Middle District of Alabama classified the claims as *Bivens* claims.

III. Violation of his Fifth Amendment right of due process, deprivation of liberty and property without notice or opportunity to be heard;

IV. Violation of his Fifth Amendment privilege against self-incrimination when he was coerced by S.A.s Smoots and Durango to produce DNA samples;

V. Violation of his Fourth Amendment right to privacy by S.A.s Smoots and Durango;

VI. Malicious use of process and abuse of process by S.A. Smoots and AUSA Geer because the Order to Compel was issued by the Middle District of Alabama as opposed to the Northern District of Alabama.[13]

The District Court for the Middle District of Alabama ordered the Government to file a Special Report and Answer. The Government's Special Report implored the Middle District to dismiss Nicholson's *Bivens* claims for five reasons. As relevant here, the Government argued that Nicholson's claims were barred by the two-year statute of limitations for *Bivens* claims in federal court in Alabama.[14] According to the Government, Nicholson's claims

---

[13] Nicholson claimed that the Northern District of Alabama should have initiated the Order to Compel because the United States Attorney's Office was conducting a grand jury investigation into Nicholson in the Northern District of Alabama, not the Middle District.

[14] Additionally, the Government argued (1) that the District Court for the Middle District of Alabama lacked personal jurisdiction over S.A. Smoots, S.A. Durango, and AUSA Greer; (2) that Nicholson's claims were an improper

accrued on March 17, 2015, because that was when he knew of his injury and who inflicted it. Because Nicholson did not file his *Bivens* suit until July 2018, it was barred by the statute of limitations.

Nicholson responded by arguing that although the events did occur on March 17, 2015, he did not become aware of them until he was afforded full discovery in his criminal case, which did not occur until after May 2018. He claimed that it was not until then that he learned the full extent of his injuries or the names of defendants Smoots and Greer, and that he did not learn Durango's name until June 2019.

The magistrate judge's report and recommendation ("R&R") recommended that the District Court dismiss Nicholson's complaint as barred by the statute of limitations. Nicholson filed objections to the R&R, claiming that, with respect to his unlawful search and seizure claim, the six-year statute of limitations under Ala. Code § 6-2-34(1) was the appropriate measure, not the two-year statute of limitations under § 6-2-38(1). With respect to his other claims, Nicholson argued that he was entitled to equitable tolling because he was told the FBI agents had a warrant, he did not become aware of his injuries until he received discovery in his

---

collateral attack on his conviction in a criminal case that was on appeal to the Eleventh Circuit at the time; (3) that Nicholson's complaint failed to state a *Bivens* claim upon which relief could be granted; and (4) that S.A. Smoots, S.A. Durango, and AUSA Greer were protected by the doctrine of qualified immunity.

criminal case, and the defendants misled him and concealed necessary information from him.

The District Court found that Nicholson's objections lacked merit and adopted the R&R. The Court held that equitable tolling did not save Nicholson's claim because his assertion of fraudulent concealment was conclusory; there were no facts that the defendants fraudulently concealed any information or otherwise prevented Nicholson from learning the facts he needed to bring his claims.

Nicholson timely appealed, arguing: (1) that a six-year statute of limitations was appropriate for his search and seizure claim; (2) that his claims did not accrue until he received full discovery in his criminal case; and (3) that he was entitled to equitable tolling because of fraudulent concealment by the defendants.

II.

We review *de novo* a district court's dismissal of a complaint for failure to satisfy the statute of limitations and the question of whether equitable tolling applies. *Jackson v. Astrue*, 506 F.3d 1349, 1352 (11th Cir. 2007). We also review a district court's interpretation and application of the statute of limitations *de novo*. *Dotson v. United States*, 30 F.4th 1259, 1264 (11th Cir. 2022). In examining whether a district court's dismissal was proper, we accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Bingham v. Thomas*, 654 F.3d 1171, 1175

(11th Cir. 2011). This Court holds *pro se* pleadings, such as Nicholson's, to a less stringent standard and liberally construes them. *Id.*

Constitutional claims under *Bivens* are governed by the same rules applying state personal injury statutes of limitations to 42 U.S.C. § 1983. *Kelly v. Serna*, 87 F.3d 1235, 1238 (11th Cir. 1996). "All 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." *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008). Although Alabama has "more than one statute of limitations for personal injury actions, the residual personal injury statute of limitations applies to all actions brought under § 1983." *Jones v. Preuit & Mauldin*, 876 F.2d 1480, 1482 (11th Cir. 1989). Alabama's residual personal injury statute of limitations is two years. Ala. Code § 6-2-38; *McNair*, 515 F.3d at 1173. Accordingly, the statute of limitations for a *Bivens* claim filed in Alabama is two years. Ala. Code § 6-2-38; *McNair*, 515 F.3d at 1173; *Jones*, 876 F.2d at 1483.

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, 127 S. Ct. 1091, 1095 (2007) (internal quotation marks omitted). Under the discovery rule, an action accrues when "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) (internal quotation

marks omitted). A § 1983 cause of action will only accrue once 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 v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003).

Under the doctrine of equitable tolling, the statute of limitations is paused "when a litigant has pursued his rights diligently, but some extraordinary circumstance prevents him from bringing a timely action." *Fedance v. Harris*, 1 F.4th 1278, 1285 (11th Cir. 2021) (internal quotation marks omitted). For fraudulent concealment to toll the statute of limitations, a plaintiff must show that the defendant actively, fraudulently, and successfully concealed facts, leaving the plaintiff ignorant of a potential claim but not merely ignorant of evidence. *Id.* at 1287. "Fraudulent concealment occurs when a defendant makes affirmative acts or misrepresentations which are calculated to, and in fact do, prevent the discovery of the cause of action." *Id.* at 1285.

Nicholson's first argument that Ala. Code § 6-2-34 is the appropriate statute of limitations for his search and seizure claim lacks merit. The District Court properly applied the two-year statute of limitations, as we have already held that § 6-2-38 is the sole statute of limitations that applies to all Alabama § 1983 claims. *McNair*, 515 F.3d at 1173.

Second, the District Court also properly determined that Nicholson's claim accrued on the day of his arrest. On March 17, 2015, Nicholson was aware that the deputy detained him and that

FBI agents seized a saliva sample from him. He could have filed an action then, because that is when he knew he had suffered an injury and knew who inflicted that injury. That Nicholson did not know the names of all the officers involved does not mean he could not have filed his suit, as evidenced by his filing the initial complaint without knowing two of the defendants' names. The statute of limitations, then, expired on March 17, 2017. Nicholson did not file his *Bivens* claims until July 5, 2018—nearly 16 months after the statute of limitations expired.

Finally, equitable tolling was not warranted because Nicholson did not allege any facts establishing intentional misrepresentation. Nicholson claimed that the agents lied about having a valid search warrant, but there is no indication that the agents knew or reasonably believed that they had an invalid warrant.[15] Therefore, their statement that they had a warrant, or court order, could not have been a lie intended to mislead Nicholson. Even further, Nicholson's argument is based on his *belief* that the warrant or order to compel was invalid, and thus the FBI agents lied to him about it. But no court has ever found it to be invalid.

---

[15] In his complaint, Nicholson alleged that he asked to see the warrant and that S.A.s Smoots and Durango did not show it to him, not that the S.A.s told him they had a valid warrant. At Nicholson's detention hearing, S.A. Durango testified that he and S.A. Smoots told Nicholson that "he was not under arrest and [that they] had a [c]ourt order to obtain his DNA." Detention Hr'g Tr., N.D. Ala. CM/ECF, Case No. 2:15-cr-00418-MHH-JHE, Doc. 91-1 at 10:12–13.

The District Court did not err in applying the two-year statute of limitations. It correctly found that the statutes of limitations for all Nicholson's claims expired before Nicholson filed his complaint, and it correctly found that equitable tolling was not warranted. The District Court's order is

AFFIRMED.