

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JASON DARNELL MOBLEY,)
)
Plaintiff,)
)
v.) 1:17CV114
)
OFFICER B.D. ESTES,)
)
Defendant.)

MEMORANDUM ORDER

THOMAS D. SCHROEDER, District Judge.

Plaintiff Jason Darnell Mobley brings this action pro se, seeking damages as a result of his allegedly wrongful arrest. In a previous memorandum opinion and order (Doc. 17), the court, among other rulings, dismissed the complaint against Defendant B.D. Estes, a Greensboro Police Department ("GPD") officer, for insufficiency of service of process. Defendant Estes has since been served and now moves to dismiss the complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 29.) The motion has been briefed (Docs. 30, 32, 33) and is ready for decision. For the reasons set forth below, the motion will be granted and the action dismissed against Estes.

I. BACKGROUND

The allegations of Mobley's complaint, which are accepted as true for purposes of the present motion, show the following:

On October 31, 2013, GPD officers Estes and T.D. Brown

arrested Mobley and nine other occupants of a hotel room, following a search that led to the seizure of nine baggies of marijuana, a scale, and empty plastic baggies. (Doc. 2 at 2-3.) Mobley had no illegal drugs or paraphernalia on his person, nor was the hotel room registered in his name. (Id. at 3.) He was nevertheless charged with possession with intent to sell a controlled substance in violation of N.C. Gen. Stat. § 90-95(a) and possession with intent to use drug paraphernalia to prepare and package marijuana in violation of N.C. Gen. Stat. § 90-113.22A. (Id. at 5; Doc. 16 at 2.) Subsequently, yet on or before December 2, 2013, a magistrate found that Mobley's warrantless arrest was "justified" based on information furnished under oath by Estes and Brown. (Doc. 2 at 5; Doc. 16 at 2.)¹ The charges against Mobley were thereafter dismissed. (Doc. 13 at 3; Doc. 16 at 3.)

On February 10, 2017, Mobley brought this action against the GPD and Estes and Brown, seeking damages from his allegedly wrongful arrest. (Doc. 1.) Mobley alleges that the officers "embellished the arresting events" in their presentation to the magistrate to secure his arrest and that Estes "misused his power that abused [Mobley's] US Constitution Rights which intentional

¹ It is not entirely clear when the magistrate's order was issued. Mobley attached the order to his complaint, which this court may consider for purposes of this motion. See Fed. R. Civ. P. 10(c). Mobley alleges that the magistrate issued the order on December 2, 2013 (Doc. 16 at 2), but the copy attached to Mobley's complaint reflects that it was issued on the day of his arrest, October 31, 2013, and sets a court date for December 2, 2013 (Doc. 2 at 5).

[sic] violated and deprived [Mobley] the privileges of freedom under Federal Law." (Doc. 13 at 2.) Mobley further contends that on February 4, 2014, his "arrest and unconstitutional incarceration was subsequently reversed and all charges were dropped." (Id. at 3.) For some reason, however, he was not released from custody until March 10, 2014. (Id.; Doc. 16 at 3.) Mobley seeks \$10,000,000 in damages for his "unlawful arrest and malicious prosecution" as well as \$200,000 in punitive damages. (Doc. 32 at 1; Doc. 16 at 3.)²

In this court's previous opinion, the court construed Mobley's complaint and subsequent filings to implicate claims for false arrest, false imprisonment, and malicious prosecution. (Doc. 17 at 10). The court (1) dismissed the claims against Estes for insufficient service; (2) held the Mobley failed to state a claim against the City of Greensboro; and (3) dismissed Mobley's claims for false arrest and false imprisonment against Brown as time-barred. The court permitted Mobley's malicious prosecution claim against Brown to proceed, finding that the alleged gap between the date his charges were dismissed and the date he was later released from prison "create[d] a reasonable inference that

² In his complaint, Mobley initially requested "[p]unitive damages fore [sic] false [arrest] \$10,000,000.00." (Doc. 2 at 4.) However, in his response to Estes's motion to dismiss, he alleges that "Officer B.D. Estes abused his professional status and power, resulting in my unlawful arrest and malicious prosecution" and requested "\$10,000,000 in relief for damages and \$200,000 in relief for punitive damages." (Doc. 32 at 1; see also Doc. 16 at 3.)

for the purpose of accrual, the proceedings against him may not have terminated on February 4, 2014.” (Doc. 17 at 12.) The court declined to address whether Brown enjoyed qualified immunity because he failed to raise the defense as to this claim. (Doc. 17 at 13 n.2.)

It appears that Mobley has since served Estes with the summons and complaint (Doc. 27), as Estes now moves to dismiss the action for failure to state a claim upon which relief can be granted. (Doc. 29.) He argues that the claims for false arrest and malicious prosecution are time-barred under the applicable three-year statute of limitations and that he is entitled to qualified immunity. (Docs. 30, 33.)³ In his less than one-page response, Mobley does not substantively address any of Estes’s arguments but simply implores the court to deny the motion because “Officer B.D. Estes abused his professional status and power, resulting in my unlawful arrest and malicious prosecution.” (Doc. 32 at 1.)

II. ANALYSIS

A. Standard of Review

The purpose of a motion under Rule 12(b)(6) is to “test[] the sufficiency of a complaint” and not to “resolve contests

³ Estes further alleges that Mobley may not recover punitive damages against him because punitive damages are not recoverable against a local government official acting in his official capacity and Mobley failed to allege sufficient aggravating circumstances to recover punitive damages against a law enforcement officer acting in his individual capacity. (Doc. 30 at 7-8; Doc. 33 at 8.)

surrounding the facts, the merits of a claim, or the applicability of defenses." Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). In considering a Rule 12(b)(6) motion, a court "must accept as true all of the factual allegations contained in the complaint," Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (citations omitted), and all reasonable inferences must be drawn in the plaintiff's favor, Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997). To be facially plausible, a claim must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable" and must demonstrate "more than a sheer possibility that a defendant has acted unlawfully." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007)). While "the complaint, including all reasonable inferences therefrom, [is] liberally construed in the plaintiff's favor," Estate of Williams-Moore v. All. One Receivables Mgmt., Inc., 335 F. Supp. 2d 636, 646 (M.D.N.C. 2004) (citing McNair v. Lend Lease Trucks, Inc., 95 F.3d 325, 327 (4th Cir. 1996)), this "does not mean that the court can ignore a clear failure in the pleadings to allege any facts [that] set forth a claim," id. Mere legal conclusions are not accepted as true, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678.

"When reviewing a pro se complaint, federal courts should

examine carefully the plaintiff's factual allegations, no matter how inartfully pleaded, to determine whether they could provide a basis for relief. In addition, in order to determine whether the claim of a pro se plaintiff can withstand a motion to dismiss, it is appropriate to look beyond the face of the complaint to allegations made in any additional materials filed by the plaintiff." Armstrong v. Rolm A. Siemens Co., 129 F.3d 1258 (4th Cir. 1997) (unpublished table opinion) (citations omitted). However, the liberal construction of a pro se plaintiff's pleading does not require the court to ignore clear defects in pleading, Bustos v. Chamberlain, No. 3:09-1760-HMH-JRM, 2009 WL 2782238, at *2 (D.S.C. Aug. 27, 2009), or to "conjure up questions never squarely presented in the complaint," Brice v. Jenkins, 489 F. Supp. 2d 538, 541 (E.D. Va. 2007) (internal quotation marks and citation omitted). Nor does it require that the court become an advocate for the unrepresented party. Weller v. Dep't of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990).

Estes moves to dismiss the complaint on two grounds: that it is facially barred by the statute of limitations; and qualified immunity. (Doc. 30 at 3-5; Doc. 33 at 1-4.) Mobley does not directly respond to either argument.⁴ While the Supreme Court

⁴ Within his response to Defendants' prior motion to dismiss, Mobley appeared to argue that the discovery rule under N.C. Gen. Stat. § 1-52(16) "determines how long I have to file once the clock starts running." (Doc. 16 at 3.) However, the discovery rule does not apply to this case, where the alleged harm was readily capable of discovery

has "repeatedly stressed the importance of resolving immunity questions at the earliest possible stage in litigation," the Court has recognized that the "'driving force' behind creation of the qualified immunity doctrine was a desire to ensure that 'insubstantial claims against government officials [will] be resolved prior to discovery.'" Pearson v. Callahan, 555 U.S. 223, 232 (2009) (quoting Hunter v. Bryant, 502 U.S. 224, 227 (1991) then Anderson v. Creighton, 483 U.S. 635, 640, n. 2 (1987)). Under these circumstances, therefore, the court does not find it necessary to address the issue of qualified immunity where Mobley's claims are clearly time-barred under the statute of limitations and may be resolved prior to discovery on separate grounds.

B. Statute of Limitations

Section 1983 has no statute of limitations but borrows it from applicable State law. Burnett v. Grattan, 468 U.S. 42, 48-49 (1984). In this instance, the applicable limitation is North Carolina's three-year statute of limitations for personal injury actions. Wallace v. Kato, 549 U.S. 384, 387 (2007); N.C. Gen.

at the time of accrual. Cf. Misenheimer v. Burris, 360 N.C. 620, 623-26, 637 S.E.2d 173, 175-77 (2006) (discussing the interplay between N.C. Gen. Stat. § 1-52(5) and § 1-52(16) and concluding the discovery rule should apply to claims of criminal conversation if the injury is latent); Alexander v. City of Greensboro, No. 1:09-CV-293, 2011 WL 3360644, at *13 (M.D.N.C. Aug. 3, 2011) (denying defendants' motion for summary judgment as to plaintiff's Fourth Amendment Section 1983 claim for alleged violation of privacy that was otherwise barred by the three-year statute of limitations, where plaintiff alleged that he did not learn of the alleged violation until two years before the filing of the complaint).

Stat. § 1-52(5); Brooks v. City of Winston-Salem, 85 F.3d 178, 181 (4th Cir. 1996) (“[B]ecause the state limitations period governing a claim for damages for personal injuries applies to a § 1983 action, regardless of the allegations in the complaint, the three-year statute of limitations set forth in N.C. Gen. Stat. § 1-52(5) (1995) controls.” (internal citation omitted)). North Carolina’s personal injury statute of limitations also governs § 1983 claims for assault, battery, false imprisonment, and malicious prosecution. N.C. Gen. Stat. § 1-52; Brooks, 85 F.3d at 181.

The question of when a claim accrues is governed by federal law “conforming in general to common-law tort principles.” Wallace, 549 U.S. at 388; Brooks, 85 F.3d at 181 (citing Nasim v. Warden, Md. House of Correction, 64 F.3d 951, 955 (1995)). A § 1983 claim generally accrues when the plaintiff knows or possesses sufficient facts to have reason to know of the injury that is the basis of the action. Wallace, 549 U.S. at 388. Under this standard, a § 1983 claim seeking damages for false arrest or false imprisonment accrues for purposes of the statute of limitations when “the claimant becomes detained pursuant to legal process.” Id. at 397; Young v. Davis, 554 F.3d 1254, 1257–58 (10th Cir. 2009).⁵ However, a claim for malicious prosecution accrues

⁵ The Supreme Court in Wallace observed that a claimant was of course not precluded from bringing his claim “immediately upon his false arrest.” Wallace, 549 U.S. at 390 n.3.

when the underlying criminal proceedings are terminated in favor of the claimant. Brooks, 85 F.3d at 183; Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379, 392 (4th Cir. 2014) (holding that the common-law tort of malicious prosecution was most analogous to plaintiff's § 1983 claim and concluding that the cause of action accrued on the date prosecutors filed a nolle prosequi).

The statute of limitations is an affirmative defense that must be proven by a defendant by a preponderance of the evidence. Fed. R. Civ. P. 8(c)(1); Stack v. Abbott Labs., Inc., 979 F. Supp. 2d 658, 664 (M.D.N.C. 2013). A court can reach the merits of a limitations issue at the Rule 12(b)(6) stage only "if all facts necessary to the [statute of limitations] defense 'clearly appear[] on the face of the complaint.'" Stack, 979 F. Supp. 2d at 664 (quoting Goodman v. Praxair, Inc., 494 F.3d 458, 464 (4th Cir. 2007)) (alteration in original). Mobley's complaint and subsequent filings potentially implicate claims of false arrest, false imprisonment, and malicious prosecution. The court will address each claim in turn.

1. False Arrest and False Imprisonment

For reasons set forth in this court's prior memorandum opinion and order, the court finds that Mobley's § 1983 claims for false arrest and false imprisonment are time-barred. Based on his contentions, Mobley became detained pursuant to legal process when

the magistrate found, on or before December 2, 2013, that the officers had probable cause to arrest him without a warrant. See Wallace, 549 U.S. at 397; Young, 554 F.3d at 1257-58 (finding that § 1983 plaintiff's claims for false arrest and false imprisonment accrued upon a judicial determination of probable cause). Therefore, Mobley's false arrest and false imprisonment claims are time-barred because the claims accrued over three years before the filing of his complaint on February 10, 2017.⁶

2. Malicious Prosecution

This leaves Mobley's § 1983 claim based on malicious prosecution. Estes urges the court to take judicial notice of a certified copy of a dismissal, which reflects that the State charges against Mobley in case number 13cr95810 were dismissed on February 4, 2014. (Doc. 33 at 2-3; Doc. 33-1 at 3.)

Generally speaking, a court may not rely on extrinsic materials to adjudicate a motion to dismiss without converting the motion into one for summary judgment. Fed. R. Civ. P. 12(d). However, "a court may properly take judicial notice of 'matters of public record' and other information that, under Federal Rule of

⁶ In its prior memorandum opinion and order, the court held that Mobley's claim for false arrest accrued on the date of his arrest, October 31, 2013. (Doc. 17 at 11-12.) However, accepting as true Mobley's allegation that the magistrate's order was issued on December 2, 2013, the court now finds that any claim for false arrest accrued no later than December 2, 2013, for purposes of the statute of limitations. See Wallace, 549 U.S. at 397. In either case, Mobley's claim is plainly time-barred.

Evidence 201, constitute 'adjudicative facts.'" Goldfarb v. Mayor & City Council of Baltimore, 791 F.3d 500, 508-09 (4th Cir. 2015) (quoting Philips v. Pitt Cnty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009) then Fed. R. Evid. 201); see Fed. R. Evid. 201(b) (providing, in relevant part that a "court may judicially notice a fact that is not subject to reasonable dispute because it" "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"). Here, taking judicial notice of the certified court document without converting the proceeding into one for summary judgment is proper because the dismissal is a matter of public record that is not disputed by either party. See Goldfarb, 791 F.3d at 508-09.

Because it is now apparent that Mobley's claims were dismissed on February 4, 2014, it is clear "on the face of the complaint" that any claim for malicious prosecution accrued on the day Mobley alleges all charges were dropped following a hearing "in [the] Chambers of an undisclosed Judge" with his court-appointed attorney and the district attorney present. (Doc. 13 at 3); See Stack, 979 F. Supp. 2d at 664. Even though he may have been incarcerated until March 10, 2014 as he has previously alleged, Mobley knew or had reason to know of his injury when his charges were dismissed on February 4, 2014. Further, there is no claim, nor is it plausible, that he lacked "sufficient facts about the harm done to him that reasonable inquiry [would not] reveal his

cause of action.” Brooks, 85 F.3d at 181 (quoting Nasim, 64 F.3d at 955). Thus, the court finds that Mobley’s claim for malicious prosecution is time-barred.

Having determined that Mobley’s claims are time-barred under the applicable statute of limitations, Estes’s remaining arguments need not be addressed.

III. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that Defendant Estes’s motion to dismiss (Doc. 29) is GRANTED and the complaint against him is DISMISSED WITH PREJUDICE.⁷

 /s/ Thomas D. Schroeder
United States District Judge

February 2, 2018

⁷ While this result would appear to apply to the remaining claim for malicious prosecution against Brown, the court does not address it insofar as there is no motion by him before the court.