

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDWARD MAX LEWIS,

Plaintiff,

v.

LEON STENZ, *et al.*,

Defendants.

OPINION AND ORDER

14-cv-446-wmc

Plaintiff Edward Max Lewis is an inmate incarcerated by the Wisconsin Department of Corrections at the Red Granite Correctional Institution. Plaintiff filed this proposed action pursuant to 42 U.S.C. § 1983, challenging the conditions of his confinement at the Forest County Jail in 2003 and 2004. He has been found eligible to proceed *in forma pauperis* and has made an initial, partial payment of the filing fee in this case as required by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(b). Because plaintiff is incarcerated, however, the PLRA requires the court to screen his proposed complaint and dismiss any portion that is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks money damages from a defendant who is immune from such relief. In addressing any *pro se* litigant’s complaint, the court must read the allegations generously, reviewing them under “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, the court must deny Lewis leave to proceed further for reasons set forth below.

ALLEGATIONS OF FACT

For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.

A. Parties

Lewis is currently in state prison as the result of his conviction in Forest County Case Number 03CF127. A jury found Lewis guilty in that case of repeated first-degree sexual assault against the same child in violation of Wis. Stat. § 948.025(1). In August 2004, the circuit court sentenced him to serve twelve years in prison followed by a ten-year term of extended supervision.

Defendant Leon Stenz was the Forest County District Attorney who presided over Lewis's criminal prosecution from 2003 through 2004. Defendant Charles Simono is the current Forest County District Attorney. Defendant George Stamper was the Forest County Jail Administrator in 2003 through 2004. Defendant Steve Weber is the current Forest County Jail Administrator. Defendant Roger Wilson was the Forest County Sheriff in 2003 through 2004. Defendant John Dennee is the current Forest County Sheriff.

In addition, Lewis would sue a variety of Forest County health care providers. Defendant Leslie Hrouda was employed at the Forest County Jail as a nurse in 2003 through 2004. Defendant Richard Brandner was employed at the Forest County Jail as a physician in 2003 through 2004. Defendant Donald Stonefeld was employed as a psychiatrist at the Forest County Jail and the Forest County Potawatomi Health and Wellness Center in 2003 through 2004. Defendant Betty Thunder was employed as a

Behavioral and Mental Health Supervisor by the Forest County Potawatomi Health and Wellness Center in 2003 through 2004. Defendant Linda Helmick was the Director of the Forest County Potawatomi Health and Wellness Center.

Lewis would also sue Wisconsin Mutual Insurance Corporation, which insures the City of Crandon, and the League of Wisconsin Municipalities Mutual Insurance, which insures Forest County.

B. Nature of Claims

On October 26, 2003, Lewis was arrested and placed in the Forest County Jail. At that time, Lewis suffered from “mental health issues” that caused him to suffer seizures, as well as “blackouts” and “fogouts.” Before his arrest, Lewis was employed at the Forest County Potawatomi Health and Wellness Center, where defendant Thunder was his supervisor. Lewis claims that Thunder visited him at the Forest County Jail on October 27, 2003, observed that Lewis was suicidal, and yet failed to inform jail staff. The following day, Lewis was placed in observation and defendant Hrouda noted that Lewis was prescribed an anti-depressant (Paxil).

While at the Forest County Jail awaiting trial in 2003 and 2004, Lewis contends that he was accused of “faking his condition,” made to shower with cold water, and placed into segregated confinement on more than one occasion without clothing or a suicide blanket. On one unspecified occasion, Lewis also alleges that he fell and hit his head while suffering from a seizure. Lewis claims that he begged for some form of activity to help his mind stay “focused,” but that jail administrator Stamper refused to

help him. He also alleges begging for “clothing and padding” while in segregation, but his requests were denied.

In November 2003, Lewis’s defense counsel filed a motion for a competency hearing. Instead of an inpatient evaluation at a mental health facility, however, Lewis contends that prosecutor Stenz had him evaluated in-house at the Forest County Jail. While Lewis acknowledges being evaluated and found competent to stand trial, he also claims that no competency hearing was actually held.

In January 2004, John Doe officers entered Lewis’s cell and took him down to the floor after he made a suicide threat. Lewis claims his navel was “torn open” during this incident. He was prescribed a triple anti-biotic ointment for this injury, which he claims was the result of excessive force.

After Lewis was convicted and sentenced to state prison in 2004, he was diagnosed with major depressive disorder with psychotic features. Lewis was also diagnosed with a form of epilepsy in 2006, for which he was allegedly denied medical and mental health care while a pretrial detainee at the Forest County Jail in 2003 and 2004.

OPINION

In this lawsuit, Lewis alleges that defendants’ failures to provide medical care amount to deliberate indifference in violation of the Fourteenth Amendment and the Americans with Disabilities Act. Lewis also contends that defendants subjected him to cruel and unusual punishment and inhumane living conditions. Lewis contends further that John Doe officers at the Forest County Jail used excessive force against him in January 2004, and that he was denied due process during his criminal proceeding.

Specifically, he claims that the prosecutor Stenz violated his right to due process by denying him a competency hearing before his trial. In addition, Lewis alleges state law claims of prosecutorial misconduct and negligence. The court takes up individual claims against various Forest County employees by category below.

I. Claims Against Defendants Stenz and Simono

As an initial matter, prosecutors such as Stenz and Simono cannot be sued for damages based on their decision to pursue charges against a defendant. *See Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). (“[I]n initiating a prosecution and in presenting the State’s case, the prosecutor is immune from a civil suit for damages under § 1983.”). To the extent that Lewis seeks monetary relief from defendants who are immune from such relief, his claims against Stenz and Simono must be dismissed as legally frivolous. *See Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982) (per curiam).

Alternatively, to the extent that Lewis alleges that he was denied due process as the result of prosecutorial misconduct leading to his 2004 conviction, those claims is barred by the rule in *Heck v. Humphrey*, 512 U.S. 477 (1994). To recover damages for a prisoner’s “unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid,” the plaintiff must prove “that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court’s issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254.” *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). A claim for damages that bears a relationship to a conviction or sentence that has not been

so invalidated is not cognizable under 42 U.S.C. § 1983. *Id.*

Since a judgment for prosecutorial misconduct against defendant Stenz would “necessarily imply the invalidity of [plaintiff’s] conviction or sentence,” that claim must be dismissed, unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. *Heck*, 512 U.S. at 486-87. Here, Lewis concedes that his conviction has not been invalidated or set aside by an authorized state tribunal or by a federal habeas corpus proceeding under 28 U.S.C. § 2254, precluding his claim for damages against Stenz and his successor as Forest County District Attorney, Charles Simono, who is named in his official capacity only. Because these claims are barred by *Heck*, the court must deny leave to proceed and dismiss the claims against defendants Stenz and Simono as legally frivolous for this additional reason. *See Moore v. Pemberton*, 110 F.3d 22, 24 (7th Cir. 1997) (A complaint that is barred by *Heck* is considered legally frivolous and counts as a “strike” under 28 U.S.C. § 1915(g)).

II. Lewis’s Remaining Claims

Lewis’s remaining claims are all barred as untimely filed. While Congress had not imposed a time limit on civil actions brought under 42 U.S.C. § 1983, the Supreme Court has instructed courts to apply the state statute of limitations that is “most analogous” to the remedy afforded by § 1983. *Owens v. Okure*, 488 U.S. 235, 239 (1989) (citations omitted). In Wisconsin, the statute of limitations for § 1983 actions is six years from the time an injury accrues. *See Wis. Stat. § 893.53; Gray v. Lacke*, 885 F.2d 399, 408-09 (7th Cir. 1989) (holding that the six-year “personal rights” statute of limitations applies to § 1983 actions, rather than the three-year period for personal

injury); *Hemberger v. Bitzer*, 216 Wis. 2d 509, 519, 574 N.W.2d 656, 660 (1998) (holding that the six-year period found in Wis. Stat. § 893.53, as Wisconsin’s general and residual personal injury statute of limitations, applies to claims brought under 42 U.S.C. § 1983).

A claim begins accruing from the date the plaintiff knew or should have known that he sustained an injury. *Limestone Dev. Corp. v. Village of Lemont, Ill.*, 520 F.3d 797, 801-02 (7th Cir. 2008); *Barry Aviation Inc. v. Land O’Lakes Municipal Airport Comm’n*, 377 F.3d 682, 688 (7th Cir. 2004). Here, the claims raised in the instant complaint began accruing in 2003 and 2004. At the latest, this means the statute of limitations expired in 2010 on plaintiff’s claims.

Although Wisconsin allows for tolling of up to 5 years due to mental illness, *see* Wis. Stat. 893.16(1), Lewis does not allege facts showing that he was completely incapacitated as the result of mental illness nor that he is otherwise entitled to tolling of any part of the applicable limitations period. To the contrary, Lewis, who was diagnosed with a form of epilepsy in 2006, describes his symptoms as intermittent episodes. Lewis does not allege facts showing that he was unable to understand or act upon his legal rights during this time. *See Miller v. Runyon*, 77 F.3d 189, 191-92 (7th Cir. 1996) (“[M]ental illness tolls a statute of limitations only if the illness *in fact* prevents the sufferer from managing his affairs and thus from understanding his legal rights and acting upon them.”) (citations omitted).

The court notes that Lewis was capable of filing a motion for post-conviction relief on his own behalf in state court in 2008. *See* Wisconsin Circuit Court Access, *State v.*

Lewis, Forest County Case No. 03CF127, <http://wcca.wicourts.gov> (last visited July 21, 2014). *Lewis* also filed state and federal habeas corpus petitions on his own behalf in 2010. *See Lewis v. Hepp*, Case No. 10-cv-466-wmc (W.D. Wis.). Even assuming that the limitations period were somehow tolled by virtue of these legal proceedings, *Lewis* provides no meaningful explanation for his decision to wait until June 2014 to file suit concerning the conditions of his pretrial confinement at the Forest County Jail. Accordingly, his request for leave to proceed must be denied and his complaint must be dismissed as legally frivolous.

ORDER

IT IS ORDERED that:

1. Plaintiff Edward Max Lewis's request for leave to proceed is DENIED and his complaint is DISMISSED with prejudice as legally frivolous.
2. The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g). (barring a prisoner with three or more "strikes" or dismissals for a filing a civil action or appeal that is frivolous, malicious, or fails to state a claim from bringing any more actions or appeals *in forma pauperis* unless he is in imminent danger of serious physical injury).

Entered this 30th day of March, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge