

United States district court — middle district for Tennessee, civil division

David Jonathan Tulis)
10520 Brickhill Lane)
Soddy-Daisy, TN 37379)
davidtuliseditor@gmail.com)
423-316-2680)

Plaintiff)

V.)

William Orange, *et al*)

Defendants)

Case no. 3:22-cv-00911
Judge Waverly Crenshaw
Magistrate judge
Barbara D. Holmes
Jury trial demanded

RECEIVED
MAY 26 2023
U.S. District Court
Middle District of TN

Motion for review of nondispositive order of magistrate judge

This motion objects to the court’s scheme to dismiss the complaint. The magistrate proposes dismissal despite the first claim of false imprisonment, depriving or infringing on constitutionally protected interests without warrant, taken true, which is unopposed by the magistrate. The false imprisonment against plaintiff’s protected press rights continue today distinct from plaintiff’s physical arrest. Dismissal is improper as to the claim of false imprisonment in the suit demanding equitable relief. The harms are repeatable without review.

Relator objects to dismissal on timeliness grounds of his false arrest claim when he establishes the harm of the arrest during booking as a continuing harm, particularly as defendant officer Orange cannot under T.C.A. § 40-7-118 issue a citation when his victim demands to see a magistrate, and additionally that T.C.A. § 40-7-118(f) is unconstitutional because it requires booking prior to adjudication for probable cause,

making plaintiff's "commitment to prison" ¹ a continuing breach against him under separate criminal penalty upon plaintiff. Booking is Nov. 11, 2021, and is described in the expungement as "date of arrest," **EXHIBIT No. 3**. That date is sufficient to defeat the court's "untimely filed" and "sat-on-his-rights" claim that the clerk's Nov. 9, 2022, time-stamp makes the complaint time-barred when filing deadline under § 1983 is said to have been Nov. 6, 2022.

The false imprisonment claims in equity of this lawsuit are under protection of the U.S. constitution. The suit evokes § 1983 for redress of deprivation of secured rights and damages.

Relator has absolute right to attend the AOC-run public meetings and continues to be threatened by Page/Crawford with false imprisonment at the next one. Relator has absolute right to be in city of Franklin free from any arrest violating T.C.A. § 40-7-103, the warrantless arrest of officer exceptions law, which liberty the city defies and rejects by ordinance Code Sec. 6-109

AOC and Franklin defendants do not answer the complaint. In filing motions to dismiss, they admit all facts, taken true. Franklin insists the court protect practices depriving plaintiff of protections under well established law (doc. No. 40, p. 6, PageID # 261). State and city defendants abuse plaintiff by arbitrary and capricious exercise of police power, under color of law and authority, and injure him. They intend to do it again, or upon like parties among members of the public. They receive the court's protection.

The constitution does not constrain when a citizen may sue to halt ongoing irreparable harms, and this citizen has done so, timely filed for his at-law damages at 42 USC § 1983, and free to pursue an action in equity stemming from persistent false imprisonment

¹ "No person can be committed to prison for any criminal matter until examination thereof is first had before some magistrate" Tenn. Code Ann. § 40-5-103.

usages and abusages by AOC and Franklin defendants, not bound by any statute of limitations for demands for relief.

The court uses the 6th circuit's analysis of "continuing seizure" in Johnson v. City of Cincinnati, 310 F.3d 484, 492-93 (6th Cir. 2002) to unjustly deny relief, to which plaintiff objects. Such reliance is not *apropos*. The cases cited pertain to malicious prosecution. This case does not include malicious prosecution in its counts and relator objects to the court's convolution.² Irrelevant precedents are no bar in this case's clear complaint, taken true, of *continuing constitutional deprivations by the defendants*, exclusive of Atrium Hospitality.

Plaintiff objects to the court's relying on precedent to dismiss the case as time barred, if the deadline rules for filing an initial complaint are so unclear. The court's findings surprise plaintiff, and its proposal's reliances are inapposite.

One is an attorney-filed case involving two extensions of time and a late-arriving nontimely filed Rule 52(b) motion. Torras Herreria y Construcciones, S.A. v. M/V Timur Star, 803 F.2d 215. Another cause is not under the constitution, but administrative. "In

² The court's reference to "malicious prosecution" is prejudicial if it intends to suggest plaintiff is adding that as a count to be proven. The complaint claims two torts — false imprisonment and false arrest. The complaint does **not prosecute** malicious prosecution for purposes of relief. The court's recommendation cites Johnson v. City of Cincinnati, 310 F.3d 484, 492-93 (6th Cir. 2002) and implies that the case can be dismissed because its facts do not "constitute a deprivation of liberty for a malicious prosecution claim." (doc No. 52, p. 14, PageID # 338) (emphasis added)

Plaintiff refers to prosecution of the criminal case as "malicious" because it is a case without probable cause, (doc. No. 1, p. 7, PageID # 7), and to indicate the continuing control and unwarranted intention of officer Orange despite clearly established law to the contrary, to punish relator for exercising his clearly established protected fundamental rights and interests as is the defendant practice and custom for general warrants, admitted in answer against petition for injunction (doc. No. 40, Page 6, PageID # 261).

reaching that conclusion, the court ruled that a complaint is not ‘filed’ for purposes of § 2000e-5(f)(1) until it is actually received by the clerk of court.” Robinette v. ProMedica Pathology Lab’ys, LLC, No. 21-3867, 2022 WL 4540192, at *1 (6th Cir. May 9, 2022). Another touches on the mailbox rule and whether a prisoner with an attorney can rely on it. Cretacci v. Call, 988 F.3d 860, 867 (6th Cir.), cert. denied, 142 S. Ct. 400 (2021); a fourth on the Tennessee “savings statute [that] allows a case that has been dismissed, for reasons other than a dismissal on the merits, to be refiled within a set period — even after the statute of limitations has run on the action,” is irrelevant to this case. Meersman v. Regions Morgan Keegan Tr., 2020 WL 2319785.

Relator files timely relies on U.S. supreme court Rule 26 and certified time-stamped mailings to show a case timely, even if it arrives after a deadline for filing. An honest reading of FRCP Rules 3 and 5 shows he is timely filed. Relator challenges as unconstitutional the uneven U.S. district court rules favoring lawyers filing electronically while *pro se* plaintiffs are required to travel in person or use the mails to file, this under his 14th amendment equal protection rights. Is a complaint untimely if a FedEx truck is hijacked and burned or a postal facility power outage delays mail two days?

“The claims bought by Plaintiff are subject to dismissal in their entirety because they are untimely under the statute of limitations” the court says (doc. No. 52, p. 16, PageID # 340). Plaintiff objects and contends its recommendation is erroneous and prejudicial. The court sees only at-law claims and pretermits the balance of the complaint

It fails to consider the action’s equitable claims and its civic-minded redress in favor of parties in like station to himself. Judicial and police defendants cause harms much wider than false imprisonment and false arrest occurring to one man on the day of Nov. 6, 2021, the date of the Tennessee judicial conference he attends by right. (1) Plaintiff is falsely arrested at the conference *from which the upcoming* judicial conference, even today, he is falsely imprisoned. Plaintiff has right to attend as a matter of law, as he is falsely arrested

in the conference Nov. 6, 2021. (2) The court fails to take into account city operational abuses that stretch across two annual calendars and into the lives of 7 million people in Tennessee, redress of which relator seeks under injunction upon Franklin and other like parties statewide.

AOC and city defendants arrest plaintiff at a hotel run by Atrium Hospitality in Franklin, Tenn. These parties operate a continuing, ongoing and persistent violation of federal 1st amendment and 4th amendment constitutional guarantees by policy, among others not fairly considered by the court's recommendation.

Relief requested

Plaintiff and relator seeking public redress requires the following consideration from the court.

1. That the court reject the proposal to dismiss the case.
2. That it recognize that the Nov. 6, 2021, act of arrest is part of an ongoing abuse by government actor defendants, and that the command by defendant Orange and city of Franklin that relator waive the exercise of constitutional rights by going to the Williamson County jail Nov. 11, 2021, prior to adjudication of his case is a distinct harm and injury part of his unabated complained-of false imprisonment.
3. That the false imprisonment and false arrest by commitment to the jail is a clear injury and harm to an innocent man, the criminal trespass charge against whom is thrown out as lacking probable cause Dec. 14, 2021, in Williamson County sessions court.
4. That the jail commitment of relator is a second custodial arrest, per jail paperwork and the expungement order, and voids the proposal's claim that the suit in entirety is timebarred by the clerk's filing the complaint Nov. 9, 2022.

5. That the court hear plaintiff demand that it declare T.C.A. § 40-7-118(f) unconstitutional, and all related consistent provisions. An innocent man's being required under criminal sanction to enter the jail for booking prior to adjudication by a judge or magistrate is abusive, such pretended obligation on its face unconstitutional, and thus a continuing unlawful act upon relator sufficient to defeat the court's dismissal proposal on the pretended claim that harm to plaintiff ends the moment defendant Orange clicks open his cuffs Nov. 6, 2021.
6. That, in the event the court finds the 42 U.S.C. § 1983 damages claims untimely filed because the complaint is lodged by the clerk Nov. 9, 2022, that the court recognize its inherent equity powers to make a separation — and that between the *at-law claims* and *equity claims*, and to recognize plaintiff's right to trial by jury upon the equitable harms claims under the U.S. constitution, and also forward-looking relief from the bench to halt irreparable material harm and injury to relator and others in like station in the public interest.
7. That the court confirm plaintiff's U.S. 9th amendment unenumerated right to inspect any branch or officer of government as expressly reserved to him under Tenn. const. art. I sect. 19 as well as the constitutional limitations placed upon the Tennessee supreme court and other "high powers" to usurp and repudiate such rights through any type of laws, rule making, or policies that would otherwise limit or render nugatory the constitution of Tennessee.

On these points, relator/plaintiff demands the entire recommendation be set aside as a misfire contrary to protection afforded plaintiff from the U.S. constitution and from clearly legal equity and law principles in the complaint.

Respectfully submitted,



David Jonathan Tulis

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2023, a copy of this document is being sent by first-class U.S. mail to each of the parties below at their address with sufficient postage to deliver this document, OR is sent digitally as attachment in an email.



David Jonathan Tulis

Mrs. Shauna R. Billingsley
Attorney for William Orange
109 Third Ave. South
Franklin TN 37064
shauna.billingsley@franklintn.gov

Mrs. Gina S. Vogel
Attorney for City of Franklin
Lewis Thomason PC
620 Market St.
Knoxville, TN 37901
GVogel@lewisthomason.com

Mrs. Jamie K. Durrett
Attorney for Atrium Hospitality
Wilson Elser Moskowitz Law
3102 West End Avenue Suite 400
Nashville, TN 37203
jamie.durrett@wilsonelser.com

Mrs. Lauren D. Rota, assistant attorney general
Attorney for Roger Page and John R. Crawford
Atty Gen. Ofc.
P.O. Box 20207
Nashville, TN 37202-0207
Lauren.Rota@ag.tn.gov

David Tulis
c/o 10520 Brickhill Lane
Soddy-Daisy, TN 37379

RECEIVED

MAY 26 2023
U.S. District Court
Middle District of TN

Clerk US District Court
719 Church St.
Nashville TN 37203