

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUL 19 1999

LUTHER D. THOMAS, Clerk
By: Deputy Clerk

GEORGE HIGH, SR. VIRGINIA	:	
HIGH, ERIC L. HIGH, JENIQUE	:	
DRAKE HIGH, GEORGE HIGH, JR.,	:	
BEVERLY HIGH, GEORGIA HOME	:	PRISONER CIVIL RIGHTS
IMPROVEMENT CO., AND HIGH	:	28 U.S.C. § 1331
FIVE LTD.	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:99-CV-1197-RLV
BARBARA BROWN, et al.,	:	
Defendants.	:	

O R D E R

George High, an inmate at the Federal Correctional Institute in Fort Dix, New Jersey, has submitted the instant pro se Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), civil rights action pursuant to 28 U.S.C. § 1331. In Bivens, the Supreme Court held that federal officials who violate a person's constitutional rights are liable for damages in federal court, pursuant to 28 U.S.C. § 1331, in the same way that state officials are liable for such damages under 42 U.S.C. § 1983. "Because of the similarity in the causes of action, a Bivens case challenges the constitutionality of federal officials' conduct, while § 1983 challenges the constitution-ality of state officials' conduct, we 'generally apply § 1983 law to Bivens cases.'" Wilson v. Blankenship, 163 F.3d 1284, 1288 (11th Cir. 1998) (quoting Abella v. Rubino, 63 F.3d 1063, 1065 (11th Cir. 1995) (per curiam)).

The matter is now before the court for a 28 U.S.C. § 1915A frivolity screening.

Under 28 U.S.C. § 1915A a federal court is required to review and dismiss any prisoner complaint seeking redress against a governmental entity or officer if the court determines that the action (1) is frivolous, malicious or fails to state a claim on which relief may be granted or (2) seeks monetary relief against a defendant who is immune from such relief. Under this standard, a district court must review the complaint and dismiss sua sponte those claims premised on meritless legal theories or that clearly lack any factual basis. Denton v. Hernandez, 504 U.S. 25, 27, 112 S. Ct. 1728, 1730-31, 118 L. Ed. 2d 340 (1992). A claim is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831-32, 104 L. Ed. 2d 338 (1989). A complaint may be dismissed for failure to state a claim on which relief may be granted when it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L. Ed. 2d 90 (1974).

To sustain his cause of action, a plaintiff must prove two elements: (1) that he suffered a deprivation of a federal right secured by the Constitution or a federal statute; and (2) that the individual committing the act or omission causing the deprivation acted under color of law. Wideman v. Shallowford Community Hosp., Inc., 826 F.2d 1030, 1032 (11th Cir. 1987).

The plaintiff sues various agents of the Federal Bureau of Investigation and the Internal Revenue Service and names as

plaintiffs, in addition to himself, his wife, son, daughter-in-law, and his businesses. He has submitted as his complaint a typed, forty-four page narrative that details the events that lead up to the arrest and conviction of Plaintiff and his wife, Virginia High. All of the events that he discusses took place from 1991 to 1993. He describes how IRS Agents and various other government actors who investigated the Highs allegedly lied and manipulated them and treated them differently because they are African-American. The plaintiff also asserts that there were irregularities with the searches and seizures that led to his arrest and indictment.

The plaintiff then claims that the attorneys retained to represent him and his wife colluded with each other and with others in order to trick them into cooperating with the Government and pleading guilty.

As an initial matter, the court notes that the plaintiff's claims are barred by the statute of limitations. The Georgia two-year statute of limitations period for personal injury actions applies to actions brought pursuant to 42 U.S.C. § 1983, Williams v. City of Atlanta, 794 F.2d 624 (11th Cir. 1986), and this two-year limitation has been further extended to apply to Bivens actions, Kelly v. Serna, 87 F.3d 1235 (11th Cir. 1996). Furthermore, when a claim appears on its face to be "manifestly barred," the court may consider the statute of limitations in a sua sponte dismissal of the claim. See Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983). It appears from the face of the complaint that

the plaintiff's claim, which arises from a 1992 event, is barred by the statute of limitations.


In addition to the statutory bar, the plaintiff's claims must still be dismissed. The Supreme Court has held that a plaintiff seeking damages for his alleged unconstitutional conviction or imprisonment must first show that his conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2255 before he can recover damages in a § 1331 claim for an alleged unconstitutional conviction or imprisonment. Heck v. Humphrey, 512 U.S. 477, 486-487, 114 S. Ct. 2364, 2372-73, 129 L. Ed. 2d 383 (1994) ("One element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused."); Uboh v. Reno, 141 F.3d 1000, 1002 (11th Cir. 1998). The instant complaint fails to show that the plaintiff's conviction or sentence has been reversed, invalidated or otherwise terminated in the plaintiff's favor.

In addition, the plaintiff lacks standing to assert claims on behalf of his wife, son, daughter-in-law, and businesses. See Warth v. Seldin, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975).

Because the plaintiff's action is statutorily barred, the complaint is hereby DISMISSED pursuant to 28 U.S.C. § 1915A. Because of this dismissal, the plaintiff's motion for appointment

of counsel and his motion to proceed in forma pauperis are DENIED as moot.

SO ORDERED this 15TH day of July, 1999.



ROBERT L. VINING, JR.
SENIOR UNITED STATES DISTRICT JUDGE