UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MARCUS MARTIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 21-2057-MSN-tmp
	)	
FLOYD BONNER, JR., ET AL.,	)	
	)	
Defendants.	)	

ORDER MODIFYING THE DOCKET;
DISMISSING COMPLAINT (ECF 1) WITH PREJUDICE IN PART & DISMISSING IT WITHOUT PREJUDICE IN PART; AND
GRANTING LEAVE TO AMEND THE CLAIMS DISMISSED WITHOUT PREJUDICE

On January 27, 2021, Plaintiff Marcus Martin, who is incarcerated under booking number 18120272 at the Shelby County Criminal Justice Center (the Jail) in Memphis, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 and a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) On January 29, 2021, the Court granted him leave to proceed *in forma pauperis*. (ECF No. 4.)

In connection with criminal charges against Martin during unspecified "1999 and 2005 cases," his § 1983 complaint alleges claims for: (1) malicious prosecution; (2) wrongful conviction; (3) police harassment; (4) evidence tampering; and (5) "defamation of character." (ECF No. 1 at PageID 2.) The complaint's chronology is difficult to comprehend, but Plaintiff seems to suggest that: (1) former Shelby County Assistant District Attorney Josh Corman "declined prosecution" of Martin in 1999; (2) former Shelby County District Attorney James Challen "declined prosecution" of Martin in 2005; (3) criminal charges against Plaintiff were "sent to [the] Assistant District Attorney Office [in] 2015 [and] 2016"; and (4) Shelby County Prosecutor

Greg Gilbert "now visited [the charges] again [in] 2018." (*Id*.) Martin's complaint lists indictment numbers but does not describe the pertinent criminal charges against him. (*Id*.)

Martin names as Defendants: (1) Deputy Sheriff Floyd Bonner, Jr.; (2) Gavin A. Smith, an Assistant District Attorney (A.D.A.) with the Shelby County District Attorney's Special Victims Unit; and (3) John Chevalier, of the Memphis Police Department (MPD). (*Id*.) Plaintiff "would like to be rewarded for all damages financially." (*Id*. at PageID 3.)

The Clerk shall modify the docket to add these Defendants: (1) Shelby County Prosecutor Greg Gilbert; (2) Shelby County; and (3) the City of Memphis.

For the reasons explained below, the Court: (1) dismisses with prejudice Martin's § 1983 claims that arose prior to January 24, 2020 because such claims are barred by the statute of limitations; (2) dismisses without prejudice Martin's § 1983 claims that arose on or after January 24, 2020, if any, because such claims fail to state a claim on which relief can be granted; and (3) grants leave to amend the claims that are dismissed without prejudice.

I. LEGAL STANDARD

The Court is required to screen prisoner complaints and to dismiss any complaint, or any portion thereof, if the complaint —

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b); *see also* 28 U.S.C. § 1915(e)(2)(B).

In assessing whether the complaint in this case states a claim on which relief may be granted, the Court applies the standards of Fed. R. Civ. P. 12(b)(6), as stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009) and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). The Court accepts a plaintiff's

"well-pleaded factual allegations as true and then determines whether the allegations "'plausibly suggest an entitlement to relief.'" *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681). Conclusory allegations "are not entitled to the assumption of truth," and legal conclusions "must be supported by factual allegations." *Iqbal*, 556 U.S. at 679. Although a complaint need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), Rule 8 nevertheless requires factual allegations to make a "'showing,' rather than a blanket assertion, of entitlement to relief." *Twombly*, 550 U.S. at 555 n.3.

"*Pro se* complaints are to be held 'to less stringent standards than formal pleadings drafted by lawyers,' and should therefore be liberally construed." *Williams*, 631 F.3d at 383 (quoting *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004)). *Pro se* litigants, however, are not exempt from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *see also Brown v. Matauszak*, 415 F. App'x 608, 612, 613 (6th Cir. Jan. 31, 2011) (affirming dismissal of *pro se* complaint for failure to comply with "unique pleading requirements" and stating "a court cannot 'create a claim which [a plaintiff] has not spelled out in his pleading'" (quoting *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975))).

Plaintiff filed his complaint (ECF No. 1) pursuant to 42 U.S.C. § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

To state a claim under § 1983, a plaintiff must allege two elements: (1) a deprivation of rights secured by the "Constitution and laws" of the United States (2) committed by a defendant acting under color of state law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

As explained below, Martin fails to state a claim for which relief may be granted.

II. DISCUSSION

A. Martin's Claims That Arose Prior To January 24, 2020 Are Time-Barred

Martin's factual allegations purportedly encompass a vast period of time. (ECF No. 1 at PageID 2 (referring to conduct that spans the period 1999 through 2018). It is unclear from the complaint whether Martin alleges any ongoing constitutional deprivations. However, to the extent the complaint arises from alleged violations of federally protected rights that occurred before January 24, 2020, those claims are untimely.

The limitations period for § 1983 actions arising in Tennessee is the one-year limitations provision found in Tenn. Code Ann. § 28-3-104(a)(1)(B). *Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005). Martin had one year from the time that he knew or had reason to know of his alleged injuries to file suit. *See Edison v. Tenn. Dep't of Children's Servs.*, 510 F.3d 631, 635 (6th Cir. 2007).

Martin signed his complaint on January 24, 2021. (ECF No. 1 at PageID 3.) The statute of limitations bars his § 1983 claims that arose prior to January 24, 2020.

Even if the Court liberally construes Martin's complaint as alleging claims that arose on or after January 24, 2020[1], those claims do not survive screening because they fail to state a claim to relief, as described *infra*.

[1] Martin's complaint affords no reasonable basis upon which to determine whether he alleges any post-January 24, 2020 events. The Court makes no finding at this juncture on that

B. Martin's Allegations Arising On Or After January 24, 2020 Fail To State A Claim

1. Official Capacity Claims; Claims Against Shelby County; Claims Against The City Of Memphis

Martin does not specify whether he sues Defendants in their official or individual capacities. (*See* ECF No. 1.) However, the Sixth Circuit requires plaintiffs to "set forth clearly in their pleading that they are suing the state defendants in their individual capacity for damages, not simply in their capacity as state officials." *Wells*, 891 F.2d at 592. "Absent a specification of capacity, it is presumed that a state official is sued in his official capacity." *Northcott v. Plunkett*, 42 F. App'x 795, 796 (6th Cir. 2002) (citing *Wells*, 891 F.2d at 593). As such, to the extent Martin asserts official capacity claims against Bonner, Smith, Gilbert, and Chevalier (collectively, the Individual Defendants), Plaintiff's allegations are construed as claims against the Individual Defendants' employers. That is, Martin's official capacity claims against Bonner, Smith, and Gilbert are construed as claims against Shelby County; and Plaintiff's official capacity claims against Chevalier are construed as claims against the City of Memphis. *See Uhles v. Funk*, No. 18-1102, 2019 WL 1359494, at *1 (M.D. Tenn. Mar. 26, 2019) (citing *Alkire v. Irving*, 330 F.3d 802, 810 (6th Cir. 2003) and *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)). However, Martin does not allege a colorable § 1983 claim against either Shelby County or Memphis.

When a plaintiff asserts a § 1983 claim against a municipality or county, the Court must analyze two distinct issues: (1) whether the plaintiff's harm was caused by a constitutional violation; and (2) if so, whether the municipality or county is responsible for that violation. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120 (1992). A local government such as a municipality or county "cannot be held liable solely because it employs a tortfeasor -- or, in other

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question. Rather, the Court's liberal treatment here of Plaintiff's complaint is for screening purposes only.

words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell v. Dep't. of Soc. Serv.*, 436 U.S. 658, 691 (1978) (emphasis in original); *see also Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994). A municipality is not responsible for a constitutional deprivation unless there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *Monell*, 436 U.S. at 691–92; *Deaton v. Montgomery Cnty., Ohio*, 989 F.2d 885, 889 (6th Cir. 1993). To demonstrate municipal liability, a plaintiff "must (1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy." *Alkire*, 330 F.3d at 815 (citing *Garner v. Memphis Police Dep't*, 8 F.3d 358, 364 (6th Cir. 1993)). "[T]he touchstone of 'official policy' is designed 'to distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible.'" *City of St. Louis v. Praprotnik*, 485 U.S. 112, 138 (1988) (Brennan, J. concurring) (quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 479–80 (1986)).

Martin does not describe any policy or custom of either Shelby County or the City of Memphis, much less ones that are unconstitutional or pursuant to which any Individual Defendants acted. (*See* ECF No. 1.) Accordingly, Martin does not plead a claim to relief against Shelby County, the City of Memphis, or against the Individual Defendants in their official capacities.

2. Individual Capacity Claims For Malicious Prosecution & False Arrest

Martin alleges that the MPD "lied" concerning Plaintiff's confession to Chevalier. (ECF No. 1 a PageID 2.) He also says that the Shelby County District Attorney's Office "tampered [with] and lost evidence." (*Id.*) Martin does not describe the contents of his confession, does not identify its date given, and does not catalogue the "lost evidence." (*See id.*) The Court construes Martin's allegations as claims for malicious prosecution and false arrest.

A claim for malicious prosecution can be brought under either federal or state law. *See Voyticky v. Village of Timberlake*, 412 F.3d 669, 675 (6th Cir. 2005). Here, it appears that Martin brings this claim under federal law. (*See* ECF No. 1 at PageID 1-2 (alleging violations of Fifth, Sixth, Eighth and Fourteenth Amendment rights).)[2] Such a claim requires a showing "that a criminal prosecution was initiated against the plaintiff and that the defendant 'ma[d]e, influence[d], or participate[d] in the decision to prosecute,'" and that the proceedings were brought without probable cause. *See Sykes v. Anderson*, 625 F.3d 294, 308 (6th Cir. 2010); *Voyticky*, 412 F.3d at 675 ("In order to prove malicious prosecution under federal law, a plaintiff must show, at a minimum, that there is no probable cause to justify an arrest or a prosecution").

Like a claim for malicious prosecution, a claim for false arrest can be brought under either federal or state law. *See Voyticky*, 412 F.3d at 677. Under federal law, plaintiffs must show that the arresting officer lacked probable cause. *Id.* An arrest made pursuant to a facially valid warrant usually acts as a complete defense to a false arrest claim. *Id.* (citing *Baker v. McCollan*, 443 U.S. 137, 143–44 (1979)). Under state law, the party must show "(1) the detention or restraint of one against his will and (2) the unlawfulness of such detention or restraint." *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 54 (Tenn. Ct. App. 2013) (citing *Coffee v. Peterbilt of Nashville, Inc.*, 795 S.W.2d 656, 659 (Tenn. 1990)). As under federal law, the party must show that the officer acted without probable cause. *Id.*

Here, Martin does not allege any of these elements for a *prima facie* case of either malicious prosecution or false arrest. For example, Martin's complaint alleges no facts contending that any Individual Defendant: made, influenced, or participated in the decision to

[2] However, the Court also notes that even under state law, Martin's claims do not survive screening for similar reasons. *See* discussion *infra*.

prosecute Plaintiff at any time, *see* ECF No. 1 at PageID 2, or that those proceedings were brought against Martin without probable cause.

Furthermore, to the extent Plaintiff alleges that Chevalier "lie[d]" under oath during criminal proceedings against Martin, *see id*., such a claim fails. "[A]ll witnesses — police officers as well as lay witness — are absolutely immune from civil liability based on their testimony in judicial proceedings." *Briscoe v. LaHue*, 460 U.S. 325, 328 (1983). A witness is entitled to testimonial immunity "no matter how egregious or perjurious that testimony was alleged to have been." *Spurlock v. Satterfield*, 167 F.3d 995, 1001 (6th Cir. 1999).

Moreover, Martin cannot sue Smith or Gilbert for money damages arising from their institution of criminal proceedings against Plaintiff. Such claims are barred by absolute prosecutorial immunity. *Burns v. Reed*, 500 U.S. 478, 490-492 (1991); *Grant v. Hollenbach*, 870 F.2d 1135, 1137 (6th Cir. 1989); *Jones v. Shankland*, 800 F.2d 77, 80 (6th Cir. 1986). That is, prosecutors are absolutely immune from suit for actions taken in initiating and pursuing criminal prosecutions because that conduct is "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976); *see also Howell v. Sanders*, 668 F.3d 344, 351 (6th Cir. 2012). Therefore, Martin may not sue Smith and Gilbert for malicious prosecution. *Spurlock v. Thompson*, 330 F.3d 791, 797 (6th Cir. 2004); *Roybal v. State of Tenn. Dist. Attorney's Office*, 84 F. App'x 589 (6th Cir. 2003); *O'Neal v. O'Neal*, 23 F. App'x 368, 370 (6th Cir. 2001).

3. Individual Capacity Claims For Police Harassment

Martin alleges that he was "harassed by Memphis Police Department." (ECF No. 1 at PageID 2.) He neither describes the allegedly harassing conduct nor identifies who undertook it.

Allegations of petty harassment do not state constitutional claims under § 1983. *See Freeman v. Gay*, No. 3:11-0867, 2012 WL 2061557, at *21 (M.D. Tenn. June 7, 2012) (internal citations omitted). "Additionally, the Court is not required to speculate as the nature of potentially viable claims based on the plaintiff's allegations." *Id*. That is precisely what Martin seeks to have the Court do here for him. The Court rejects the invitation to do so.

Martin does not allege a cognizable § 1983 claim for harassment by the MPD.

4. Individual Capacity Claims Against Sheriff Bonner

Martin's § 1983 pleading contains no specific factual allegations against Sheriff Bonner. (ECF No. 1.) When a complaint fails to allege any action by a defendant, it necessarily fails to "state a claim for relief that is plausible on its face." *Twombly*, 550 U.S. at 570. Therefore, Martin does not sufficiently allege a claim against Bonner in his individual capacity.

5. Individual Capacity Claims For Defamation & Gross Negligence

Martin alleges that he suffered "defamation of character" and the MPD committed "gross negligence." (ECF No. 1 at PageID 2.) He does not: describe the defamation; indicate the date it was made; identify the persons who communicated it; or describe the conduct that was negligent. Aside from their starkly sparse nature, his allegations do not give rise to a colorable § 1983 claim.

Defamation and negligence claims arise under state law, and they do not give rise to federal claims under § 1983. *See*, *e.g.*, *Bullard v. Inkster Housing & Re-dev. Comm'n*, 126 F. App'x 718, 721 (6th Cir. 2005) ("a showing of gross negligence" did not suffice to prove liability in a § 1983 case); *Dickerson v. Robinson*, No. 3:12-cv-802, 2012 WL 3472196, at *3 (M.D. Tenn. Aug. 14, 2012) (defamation, without more, does not state a claim under § 1983, because harm or injury to reputation does not result in a deprivation of any "liberty" or "property" protected by the

Due Process Clause) (citing *Paul v. Davis*, 424 U.S. 693, 712 (1976).) These principles bear upon the exercise of federal court jurisdiction over Martin's defamation and negligence claims.

Under 28 U.S.C. § 1367(a), "[i]f there is some basis for original jurisdiction, the default assumption is that the court will exercise supplemental jurisdiction over all related claims." *Veneklase v. Bridgewater Condos, L.C.*, 670 F.3d 705, 716 (6th Cir. 2012) (quoting *Campanella v. Commerce Exch. Bank*, 137 F.3d 885, 892 (6th Cir. 1998)) (internal quotation marks omitted). Section 1367 grants district courts broad discretion on whether to exercise supplemental jurisdiction over related state law claims. *See Gamel v. City of Cincinnati*, 625 F.3d 949, 951 (6th Cir. 2010). Courts should "weigh several factors, including the 'values of judicial economy, convenience, fairness, and comity.'" *Id*. at 951–52 (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)) (internal quotation marks omitted).

Because all of Martin's federal claims are being dismissed, the Court **DECLINES** to exercise supplemental jurisdiction over any claims arising under state law. Martin's state law claims for defamation and gross negligence are **DISMISSED** pursuant to 28 U.S.C. § 1367(c)(3).

III. AMENDMENT UNDER THE PLRA

The Sixth Circuit has held that a district court may allow a prisoner to amend his complaint to avoid a *sua sponte* dismissal under the Prison Litigation Reform Act, 28 U.S.C. §§ 1915, *et seq*. (the "PLRA"). *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013) ("[W]e hold, like every other circuit to have reached the issue, that under Rule 15(a) a district court can allow a plaintiff to amend his complaint even when the complaint is subject to dismissal under the PLRA")); *see also Brown v. R.I.*, 511 F. App'x 4, 5 (1st Cir. 2013) (per curiam) ("Ordinarily, before dismissal for failure to state a claim is ordered, some form of notice and an opportunity to cure the deficiencies in the complaint must be afforded."). Leave to amend is not required where a

deficiency cannot be cured. *See Gonzalez-Gonzalez v. United States*, 257 F.3d 31, 37 (1st Cir. 2001); *Curley v. Perry*, 246 F.3d 1278, 1284 (10th Cir. 2001). The Court grants Martin leave to amend certain of his claims, as explained below.

IV. CONCLUSION

For all of the reasons explained above:

(1) Plaintiff's claims that arose prior to January 24, 2020 (ECF No. 1) are **DISMISSED WITH PREJUDICE** because they are barred by the statute of limitations. *See* Tenn. Code Ann. § 28-3-104(a)(1)(B). Leave to amend such claims is **DENIED**; and

(2) Plaintiff's claims that arose on or after January 24, 2020 (ECF No. 1) are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim on which relief can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii) and 1915A(b)(1)-(2). Leave to amend such claims is **GRANTED**. Any amendment must be filed within twenty-one (21) days after the date of this order. Plaintiff is advised that an amended complaint will supersede the original complaint and must be complete in itself without reference to the prior pleadings. The amended complaint must be signed, and the text of the amended complaint must allege sufficient facts to support each claim without reference to any extraneous document. Any exhibits must be identified by number in the text of the amended complaint and must be attached to the complaint. All claims alleged in an amended complaint must arise from the facts alleged in the original complaint. Each claim for relief must be stated in a separate count and must identify each Defendant sued in that count. If Plaintiff fails to file an amended complaint within the time specified, the Court will dismiss the above-referenced claims and enter judgment. The Court recommends that any such dismissal be treated as a strike pursuant to 28 U.S.C. § 1915(g). *See Simons v. Washington*, No. 20-1406, 2021 WL 1727619, at *1 (6th Cir. May 3, 2021).

IT IS SO ORDERED this 5th day of January, 2022.

s/ Mark Norris
MARK S. NORRIS
UNITED STATES DISTRICT JUDGE