

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

July 30, 1999

GEORGE HIGH, SR.; VIRGINIA HIGH,
Plaintiffs,

PRISONER CIVIL RIGHTS

v.

CIVIL ACTION NO.
1:99-CV-1197-RLV

1616

WILLIAM A. MORRISON
INDIVIDUALLY AND D.B.A.
JONES, MORRISON & WOMACK,
P.C.; C. MICHAEL ABBOTT
INDIVIDUALLY AND C. MICHAEL
ABBOTT P.C.,
Defendants.

ORDER

Plaintiff George High, Sr., an inmate at the Federal Prison Camp in Jesup, Georgia, has submitted the instant pro se action pursuant to 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), and 42 U.S.C. § 1985. The matter is now before the Court for a 28 U.S.C. § 1915A frivolity screening.

Title 28 U.S.C. § 1915A requires a federal court 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, 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) 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).

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 constitutionality 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)).

To prove a private conspiracy in violation of 42 U.S.C. § 1985(3), a plaintiff must prove: “(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.” Park v. City of Atlanta, 120 F.3d 1157, 1160 (11th Cir. 1997).

Plaintiff sues two attorneys, William A. Morrison and C. Michael Abbott, who represented the plaintiff and his wife in certain criminal proceedings, and their law firms. He names as a plaintiff, in addition to himself, his wife. He has submitted as his complaint a typed, 49-page narrative that details the events that led to the arrest and conviction of plaintiff and his wife, Virginia High. All of the events that he discusses took place from 1990 to 1994. 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. Plaintiff also asserts that

there were irregularities with the searches and seizures that led to his arrest and indictment.

Plaintiff then claims that Morrison and Abbott, the named defendants, colluded with each other and with others in order to trick the plaintiff and his wife into cooperating with the Government and pleading guilty.

As an initial matter, plaintiff's claims are barred by the statute of limitations. The Georgia two-year statute of limitation period for personal injury actions applies to Bivens actions, Kelly v. Serna, 87 F.3d 1235 (11th Cir. 1996), as well as to claims under 42 U.S.C. § 1985. See Newberger v. United States Marshals Service, 751 F.2d 1162, 1165 (11th Cir. 1985) (since the statute does not contain a statute of limitations, the Court should apply "the most analogous state statute of limitations"). 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. Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983). It appears from the face of the complaint that the plaintiff's claims, which arise from events leading up to his 1993 conviction, are barred by the statute of limitations.

In addition to the statutory bar, plaintiff's claims must still be dismissed. The plaintiff has not sufficiently alleged a conspiracy to establish the defendants' liability under 42


U.S.C. § 1985. Vague and general allegations of participation in a conspiracy are insufficient to support such a claim, or to show a violation of the Civil Rights Act. Fullman v. Graddick, 739 F.2d 553 (11th Cir. 1984). Plaintiff has failed to support his allegation of conspiracy with any specific facts. His claim, therefore, is due to be dismissed.

The plaintiff's Bivens claims against Abbott and Morrison fail for lack of Federal action. Private persons may be held liable under Bivens but only if they "perform a government task as a government agent or actor." Vector Research, Inc. v. Howard & Howard Attorneys P.C., 76 F.3d 692, 698 (6th Cir. 1996). Other than his vague claim of conspiracy, the plaintiff's allegations do not indicate that these defendants acted as government agents.

In addition, the plaintiff lacks standing to assert claims on behalf of his wife. See Marth v. Seldin, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975).

Because plaintiff's action is statutorily barred, the complaint is hereby **DISMISSED** pursuant to 28 U.S.C. § 1915A.

IT IS SO ORDERED, this 28th day of July, 1999.


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