Supreme Court No. 96130-1
Court of Appeals No. 76948-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION ONE

STEPHEN THOMAS LYNCH,
Plaintiff/Appellant,
v.
STATE OF WASHINGTON, et.al.,
Defendants/Respondents.

APPEAL FROM THE KING COUNTY SUPERIOR COURT
The Honorable Monica Benton, Trial Judge

PLAINTIFF/APPELLANT'S PETITION FOR REVIEW

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TABLE OF CONTENTS

RCW 4.22.070(1)(b)	3
Title 42, United States Code, Section 1983	1, 2, 3, 8, 9, 10, 11, 12, 13, 15, 16

NOTES

A. IDENTITY OF PETITIONER.

Stephen T. Lynch, Plaintiff and Appellant, (hereinafter "Mr. Lynch") asks this Court to accept review of the Court of Appeals decision designated below.

B. COURT OF APPEALS DECISION

Mr. Lynch seeks review of the Court of Appeals decision affirming the trial court's order dismissing his complaint under CR 12(b)(6). *Lynch v. State*, 2018 Wash. App. LEXIS 1436, 2018 WL 3120840, filed June 25, 2018 (Division One, 2018).[1]

Mr. Lynch's complaint alleges federal constitutional claims under Title 42, United States Code, §1983, as well as state law tort law claims. This Court should reverse the CR 12(b)(6) dismissal and hold that the statute of limitations

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[1] A copy of the slip decision is reproduced in the Appendix II, pages A-1 to A-13.

The appellate panel characterized the dismissal as "pursuant to CR 12(c)". Slip decision, Appendix II pages A-1, A-4, fn.3. However, the trial court's dismissal order, captioned "*Order on Defendants' CR 12(b)(6) Motion to Dismiss*", cited CR 12(b)(6) only, not 12(c). CP 137-138; *See* Appendix II, p. A-14.

began to run on the date when Mr. Lynch's underlying criminal case was dismissed.

The relief requested here would fulfill the remedial purposes of §1983, a crucial federal civil rights statute: compensation, deterrence, and protection of constitutional rights. *See, e.g., Smith v. Wade*, 461 U.S. 30, 49-50, 75 L. Ed. 2d 632, 103 S. Ct. 1625 (1982). It would promote justice under our state law tort system. It would facilitate the decision of this case on the merits. RAP 1.2(a).

C. ISSUES PRESENTED FOR REVIEW

Mr. Lynch urges the Court to grant review on one or more of the following issues:

(1) CR 12(b)(6) standard of review. On a defense motion to dismiss under CR 12(b)(6), should the complaint be narrowly construed against the civil rights plaintiff, as the appellate panel did here, or should the complaint proceed if "any hypothetical situation conceivably raised by the complaint" supports it, as this Court has held in *Halvorson v. Dodd*, 89 Wash. 2d 673, 674, 574 P. 2d 1190 (1978), and other cases?

(2) Statute of limitations--§1983 claims. Mr. Lynch challenges his conviction, sentence and the resulting

unreasonable seizures. Did the statute of limitations for his §1983 federal claims begin to run on the date when his underlying criminal case was dismissed, or on some other date?

(3) Statute of limitations—state law claims. Did the statute of limitations on Mr. Lynch's state law claims begin to run on the date when his underlying criminal case was dismissed, or on some other date?

D. STATEMENT OF THE CASE

This is a civil action by Mr. Lynch seeking damages against the state of Washington and several of its employees (hereinafter "state defendants").[2] The civil claims include common law tort causes of action and constitutional claims brought pursuant to Title 42, United States Code, §1983. CP 2. The state defendants claim that the statute of limitations has run. They are incorrect. Mr. Lynch's causes of action

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[2] The purpose of the complaint was to seek §1983 liability against the individual defendants, and liability against the State on the state law claims under *respondeat superior*, RCW 4.22.070(1)(a) and RCW 4.22.070(1)(b). *See Complaint*, ¶¶ 79, 85, 92, 94 and 95. This issue was discussed with the panel during oral argument.

The panel chose to raise and discuss the lack of State §1983 liability *sua sponte* in Part II.A of its slip decision, Appendix II pages A-5, A-6.

challenge the validity of his conviction and sentence. His claims did not accrue until the underlying criminal case was dismissed on or about February 8, 2016. The statute of limitations began to run on that date. *See Heck v. Humphrey*, 512 U.S. 477, 489-90, 129 L. Ed. 2d 383, 114 S. Ct. 2364 (1994); *see Manuel v. City of Joliet*, 137 S. Ct. 911, 919-921, 197 L. Ed. 2d 312, 2017 U.S. LEXIS 2021 (2017); *see Brown v. Department of Corrections*, 198 Wash. App. 1, 12-14, 2016 Wash.App. LEXIS 3081 (Division One, 2016). Mr. Lynch filed his lawsuit just seven months later, on November 8, 2016, well within the statute of limitations.

The trial court granted the State's CR 12(b)(6) motion to dismiss on statute of limitations grounds. CP 137-138. Our appeal of this ruling was timely filed. CP 139-142.

Our complaint alleges that in September, 2006, Stephen Lynch entered a plea of guilty to a charge of "felony harassment". Mr. Lynch's plea was presented pursuant to *North Carolina v. Alford*.[3] He advised the King County Superior Court, on the record, that he did not believe that he was guilty of a crime in the matter. *Complaint*, ¶ 10, CP 3.

Mr. Lynch owns a series of parcels of land along the

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[3] 400 U.S. 25, 91 S. Ct. 160, 27 L.Ed.2d 162 (1970).

Cedar River. He makes his home there. The incident arose from a verbal dispute with a neighbor, Connie Laire, who brought contractors onto the property. Ms. Laire was the complaining witness. *Complaint*, ¶ 11, CP 3. Mr. Lynch has maintained his innocence throughout this proceeding.

On February 8, 2016, the guilty plea was withdrawn. The conviction was vacated. A plea of not guilty was entered. The case was dismissed with prejudice. Mr. Lynch was released from all penalties and disabilities resulting from the offense. The Court directed that for all purposes, Mr. Lynch may state that he has never been convicted of the crime. *Complaint*, ¶ 51, CP 13.

Simply stated, the Complaint alleges that Mr. Lynch was prosecuted and convicted although he is innocent. The prosecution, conviction and detention (*see* ¶¶ 13-44) constituted an unreasonable seizure in violation of the Fourth Amendment. *Complaint*, ¶¶ 60-65, CP 14-15. Malicious prosecution is a remedy for unjustified criminal prosecutions. Mr. Lynch's malicious prosecution claim is included within his Fourth Amendment unreasonable seizure and unlawful arrest/unlawful imprisonment causes of action. *Manuel v. City of Joliet, supra*, 137 S. Ct. at 919-921.

The complaint for damages, alleging federal and state law claims, was filed on November 8, 2016, just seven

months after the dismissal. CP 1. This filing was well within the statute of limitations.

The complaint further alleges that while the underlying case was pending, the defendants falsely arrested and imprisoned Mr. Lynch in three different institutions without a warrant or other authority of law. *See Complaint*, ¶¶ 16-44, CP 4-7; ¶¶ 54-55, CP 13. In addition to unreasonable seizure, these facts constitute an arrest without probable cause in violation of the Fourth Amendment. *Complaint*, ¶¶ 66-71.

Defendants knew that Mr. Lynch suffered from serious health problems. *Complaint*, ¶¶ 31, 33, 34, 36, and 43; CP 7-11. The health problems arose in connection with Mr. Lynch's service in the United States Army in Germany. *Complaint* ¶ 31 (a), CP 8. He was being treated with medications prescribed by the United States Veteran's Administration. *Complaint*, ¶¶ 31(c), CP 8. During the unreasonable seizure and arrest, DOC employees took Mr. Lynch into custody without any planning for his medical care. *Ibid*. Medications provided to the DOC were not given to Mr. Lynch. *Complaint*, ¶¶ 31(c), (d) and 36, CP 8-9. Apparently, they were thrown away. *Complaint*, ¶ 31(c), CP 8. Mr. Lynch lost 12 pounds during the first week of his imprisonment at the Regional Justice Center in Kent. *Complaint*, ¶ 36(a), CP 9. He suffered in DOC custody.

Complaint, ¶ 31(d), CP 8. DOC personnel were deliberately indifferent to his serious medical needs. *Complaint*, ¶ 31(c), CP 8.

In addition to unreasonable seizure and wrongful arrest and imprisonment in violation of the Fourth Amendment, these facts constitute a violation of Mr. Lynch's right to be protected from harm while in custody in violation of the Eighth and Fourteenth Amendments. *Complaint*, ¶ 72-76, CP 16. The facts also support Mr. Lynch's negligence claim. *Complaint*, ¶¶ 81-86, CP 17-18.

On or about October 29, 2007 Mr. Lynch was found not guilty of the alleged "contact" violation by the hearing officer. He was ordered "released to the streets". *Complaint*, ¶44, CP 11.

Mr. Lynch was sent out of the prison "to the streets" without his clothes, wallet, money, identification or keys. *Complaint*, ¶ 44(b), CP 11. He searched for his property for weeks after his release. *Complaint*, ¶¶ 45-50, CP 11-12. Based upon the above-described unreasonable seizures in violation of the Fourth Amendment, his property was wrongfully seized and converted, temporarily or permanently. *Complaint*, ¶ 56, ¶¶ 87-93; CP 13, 18-19.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. Issue One: This Court's fair standard of review on CR 12(b)(6) motions should be enforced in civil rights cases.

The state defendants ask for dismissal citing CR 12(b)(6). The only issue raised is the statute of limitations. *See* Defendants' CR 12(b)(6) motion to dismiss, pp. 2, 5, CP48, 51.

This Court should grant review and hold that to prevail on a CR 12(b)(6) motion in a civil rights case, these defendants have the burden of establishing "beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief." *Corrigal v. Ball & Dodd Funeral Home, Inc.,* 89 Wn.2d 959, 961, 577 P.2d 580 (1978) (citing cases). This approach would fulfill the remedial purposes of §1983: compensation, deterrence, and protection of constitutional rights. *See, e.g., Smith v. Wade*, *supra*., 461 U.S. at 49-50.

The Court should hold that motion should be denied if the plaintiff can assert any hypothetical factual scenario that gives rise to a valid claim, even if the facts are alleged informally for the first time on appeal. *Bravo v. Dolsen*

Cos., 125 Wn.2d 745, 750, 888 P.2d 147 (1995). *See Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978); *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988), *aff'd on reh'g*, 113 Wn.2d 148, 776 P.2d 963 (1989). Appellate review of a CR 12(b)(6) dismissal is *de novo*. *Hoffer*, 110 Wash.2d at 420.

As discussed below, the appellate panel appears to have construed the complaint against Mr. Lynch and in favor of the State, in derogation of this Court's cases. RAP 13.4(b)(1) The standard of review of civil rights complaints is an issue of substantial public interest. RAP 13.4(b)(4). The statute of limitations in civil rights cases is likewise an issue of substantial public interest. RAP 13.4(b)(4).

2. <u>Issue Two: The statute of limitations for the §1983 claims should begin to run on the date the underlying criminal charge was dismissed</u>

Section 1983 does not include its own statute of limitations. Federal courts apply the statute of limitations governing personal injury claims in the forum state, "along with the forum state's law regarding tolling, including equitable tolling, except to the extent any of these laws is inconsistent with federal law." *Butler v. Nat'l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014)

(citation omitted).

Although the statute of limitations applicable to § 1983 claims is borrowed from state law, federal law governs when a §1983 claim accrues. *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999).

As discussed below, Mr. Lynch's §1983 claims accrued upon the dismissal of his criminal case on or about February 8, 2016.

The complaint alleges that under the incorporated factual allegations, Mr. Lynch was subjected to unreasonable seizures in violation of the Fourth Amendment. *Complaint*, ¶¶ 10-71, CP 14-15. The unreasonable seizures include the conviction, the sentence, the arrest, Mr. Lynch's imprisonment, and the conditions of that imprisonment. *Complaint*, ¶¶ 60-76. In the §1983 federal claims, we challenge the validity of the conviction and sentence. The unlawful conviction and sentence formed the basis for the unlawful seizures and imprisonment of Mr. Lynch by the defendants attributable to the conviction and sentence, described in the complaint.

Mr. Lynch entered an *Alford* plea to the charge. Complaint, ¶ 10. He was subjected to the conviction, the

sentence and the resulting penalties and disabilities until the Court's order of vacation and dismissal was entered on February 8, 2016. *Complaint*, ¶51. Under *Heck v. Humphrey* and its progeny, Mr. Lynch's § 1983 claims were not cognizable until that date:

> Under our analysis the statute of limitations poses no difficulty while the state challenges are being pursued, since the § 1983 claim has not yet arisen. Just as a cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor, [citations omitted], so also a § 1983 cause of action for damages *attributable* to an unconstitutional conviction or sentence does *not* accrue until the conviction or sentence has been invalidated.

Heck v Humphrey, 512 U.S. 477, 489-90, 114 S. Ct. 2364, 129 L.Ed.2d 383 (1994) (emphasis supplied). This passage suggests that the terms "favorable termination" and "invalidated" are synonyms.

The Fourth Amendment governs Mr. Lynch's claim that a form of legal process resulted in his detention, unsupported by probable cause. *Manuel v. City of Joliet, supra*. The Supreme Court's discussion in *Manuel* of the accrual date issue is helpful:

Here, the parties particularly disagree over the accrual date of Manuel's Fourth Amendment claim—that is, the date on which the applicable two-year statute of limitations began to run. The timeliness of Manuel's suit hinges on the choice between their proposed dates. But with the following brief comments, we remand that issue to the court below.

In defining the contours and prerequisites of a §1983 claim, including its rule of accrual, courts are to look first to the common law of torts. See ibid. (explaining that tort principles "provide the appropriate starting point" in specifying the conditions for recovery under §1983); *Wallace v. Kato*, 549 U. S. 384, 388-390, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007) (same for accrual dates in particular). Sometimes, that review of common law will lead a court to adopt wholesale the rules that would apply in a suit involving the most analogous tort. *See id*., at 388-390, 127 S. Ct. 1091, 166 L. Ed. 2d 973; *Heck v. Humphrey*, 512 U. S. 477, 483-487, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994).

But not always. *Common-law principles are meant to guide rather than to control the definition of §1983 claims, serving "more as a source of inspired examples than of prefabricated components." Hartman v. Moore*, 547 U. S. 250, 258, 126 S. Ct. 1695,

164 L. Ed. 2d 441 (2006); *see Rehberg v. Paulk*, 566 U. S. 356, 366, 132 S. Ct. 1497, 182 L. Ed. 2d 593 (2012) (noting that "§1983 is [not] simply a federalized amalgamation of pre-existing common-law claims"). *In applying, selecting among, or adjusting common-law approaches, courts must closely attend to the values and purposes of the constitutional right at issue.*

With these precepts as backdrop, Manuel and the City offer competing views about what accrual rule should govern a §1983 suit challenging post-legal-process pretrial detention. According to Manuel, that Fourth Amendment claim accrues only upon the dismissal of criminal charges—here, on May 4, 2011, less than two years before he brought his suit. See Reply Brief 2; Brief for United States as Amicus Curiae 24-25, n. 16 (taking the same position). Relying on this Court's caselaw, Manuel analogizes his claim to the common-law tort of malicious prosecution. See Reply Brief 9; *Wallace*, 549 U. S., at 389-390, 127 S. Ct. 1091, 166 L. Ed. 2d 973. An element of that tort is the "termination of the . . . proceeding in favor of the accused"; and accordingly, the statute of limitations does not start to run until that termination takes place. *Heck*, 512 U. S., at 484, 489, 114 S. Ct. 2364, 129 L. Ed. 2d 383. Manuel argues that following the same rule in suits like his will avoid "conflicting resolutions" in §1983 litigation and criminal

> proceedings by "preclud[ing] the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution." Id., at 484, 486, 114 S. Ct. 2364, 129 L. Ed. 2d 383; see Reply Brief 10-11; Brief for United States as Amicus Curiae 24-25, n. 16. In support of Manuel's position, *all but two of the ten Courts of Appeals that have recognized a Fourth Amendment claim like his have incorporated a "favorable termination" element and so pegged the statute of limitations to the dismissal of the criminal case*. See n. 4, supra. 9
>
> That means in the great majority of Circuits, Manuel's claim would be timely.

Manuel v. City of Joliet, 137 S. Ct. at 920-921 (emphasis added)(one paragraph break supplied).

Heck, *Manuel*, and the clear weight of federal circuit authority support pegging the accrual date for Mr. Lynch's causes of action to the dismissal of his criminal case.[4] *Ibid*. The dismissal is a "favorable termination".

In deciding this CR 12(b)(6) motion, the Court should decide this statute of limitations issue in a manner which "[safeguards] the rights of federal civil rights litigants,"

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[4] Undersigned counsel has not located a Washington state appellate decision deciding this issue.

Usher v. City of Los Angeles, 828 F.2d 556, 560 (9th Cir. 1987), and vindicates the purposes of §1983: protection of Mr. Lynch's constitutional rights, compensation for his injuries, and deterrence. *See Smith v. Wade*, *supra*., 461 U.S. at 49-50. These important purposes are furthered by following the substantial federal authority discussed above. This Court should hold that the accrual date for Mr. Lynch's §1983 claims is the date of the court's order of dismissal of the criminal case in February, 2016. The claims are timely.[5]

Although this is a CR 12(b)(6) motion, the appellate panel construed *Heck*, the facts and the dismissal order narrowly against Mr. Lynch, and broadly in favor of the State defendants, the moving party. *See* Slip Decision, Appendix II pages A6-A11. This is contrary to this Court's cases cited above. The panel did not follow *Manuel*'s "favorable termination" approach, even though a "favorable termination" element is part of our own state's malicious

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[5] Had Mr. Lynch filed the lawsuit before his case was dismissed, he would have faced a motion to dismiss by the state defendants under *Heck* alleging that his claims were not yet cognizable. This appeal should be resolved as requested by Mr. Lynch to avoid a Scylla vs. Charybdis dilemma.

prosecution tort jurisprudence, and the dismissal order can be seen as a favorable termination. The panel required the word "invalid" as an essential component of a dismissal order. The effect was to forestall Mr. Lynch's day in court.

Nothing in the text of §1983, its legislative history or the *Heck* decision requires a favorable termination order to use the word "invalid", as if it were scripture. The word "invalidated" is not a "prefabricated component". *See Manuel, supra; Hartman v. Moore, supra.,* quoted above.

The case facts and the order in Mr. Lynch's case can be seen as an invalidation—or favorable termination--of the conviction. If the complaint is construed broadly, these defendants did not establish "beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief." *Corrigal v. Ball & Dodd Funeral Home, Inc., supra*., 89 Wn.2d at 961. This Court should grant review and allow the federal civil rights claims to go forward under this Court's CR 12(b)(6) standard.

3. <u>Issue Three: The statute of limitations for the state law claims should begin to run on the date the underlying criminal charge was dismissed</u>.

The same analysis applies to the state law claims framed in the complaint. The false arrest, imprisonment and wrongful seizures of Mr. Lynch and his property were based upon the invalid conviction, the invalid sentence, and the resulting, now-invalidated disabilities and penalties. *Complaint*, ¶¶ 10-58. In the state law claims, we likewise challenge the validity of the conviction and sentence.

Mr. Lynch entered an *Alford* plea to the charge. *Complaint*, ¶ 10. He was subjected to the conviction, the sentence and the resulting penalties and disabilities until the Court's order of vacation and dismissal was entered on February 8, 2016. *Complaint*, ¶51. Under Washington law, Mr. Lynch's state law claims did not accrue until the dismissal. *See Brown v. Department of Corrections*, 198 Wash. App. 1, 12-14, 2016 Wash.App. LEXIS 3081 (Division One, 2016).[6]

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[6] The panel seems to have overlooked this argument. The panel construed the complaint against Mr. Lynch, by presuming that he "knew" all of the essential elements in 2007. *See* Slip decision, page A-13, fn. 6. In fact, as discussed above, the state law claims did not accrue until the dismissal of the criminal case in 2016.

The analysis in *Brown* is helpful. The plaintiff alleged negligent supervision by the DOC resulting in the murder of plaintiff's decedent by a probationer. The DOC contended that the plaintiff "knew" who the killer was via news accounts and the charging documents, and that the statute of limitations had run due to the passage of time after the news accounts, etc. The appellate court rejected the DOC position:

> We conclude the undisputed record establishes the cause of action against DOC for negligent supervision did not accrue and the three-year statute of limitations did not begin until Walker was convicted in February 2012. Only then did the Browns know the identity of the shooter and the essential elements of the tort claim, including that DOC's negligent supervision of Walker was a proximate cause of Alajawan's death.

Brown v. Department of Corrections, supra, 198 Wash.App. at 14.

Our analysis is similar. One of the elements of our state law claims is that the underlying criminal case was terminated in Mr. Lynch's favor. Mr. Lynch's state law tort claims did not accrue until the Court's order in February, 2016 established the dismissal of the criminal

case and the vacation of its resulting sentence, disabilities and penalties. *See Complaint*, ¶¶ 51-59. As noted, had Mr. Lynch filed his state law claims prior to Judge McCullough's order, the state could have sought dismissal claiming that the false arrest, seizures and imprisonment were valid because the conviction and the sentence still stood. The purposes and goals of our state law civil justice system are well served by holding that Mr. Lynch's causes of action accrued when Judge McCullough's order was entered in February, 2016.

F. CONCLUSION

For the reasons stated, the CR 12(b)(6) dismissal of the case should be reversed. The cause should be remanded to the Superior Court for further proceedings.

DATED this the 23rd day of July, 2018.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the 23rd day of July, 2018, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court. I requested e-service on counsel for defendants. I also served a copy on opposing counsel via email.

S/ John R. Muenster
Muenster & Koenig

APPENDIX I

CR 12(b)(6):

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

. . . (6) failure to state a claim upon which relief can be granted; . . .

Eighth Amendment to the United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment to the United States Constitution, Section One:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fourth Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Title 42, United States Code, Section 1983:

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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a

declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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APPENDIX II TABLE OF CONTENTS

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEPHEN THOMAS LYNCH, Appellant, v. STATE OF WASHINGTON, and CHERYL MUSTAIN, in her capacity as a corrections officer for the state of Washington, and as an individual, and KIMBERLI DEWING, in her capacity as a corrections officer for the state of Washington, and as an individual, Respondents, DOES 1 through 30, Defendants.	DIVISION ONE No. 76948-1-I UNPUBLISHED OPINION FILED: June 25, 2018

DWYER, J. — Stephen Lynch appeals from the trial court's order dismissing, pursuant to CR 12(c), his actions filed against the State of Washington and Department of Corrections community correctional officers Cheryl Mustain and Kimberli Dewing. Lynch contends that the trial court erred because his pleadings set forth legally sufficient and timely actions against the State, Mustain, and Dewing pursuant to 42 U.S.C. § 1983 and various state law tort theories. Because there is nothing in the pleadings to support that Lynch alleged a cognizable § 1983 action or timely filed his state law tort claims, we

conclude that the trial court did not err by ordering dismissal. Accordingly, we affirm.

I

In 2006, Lynch pleaded guilty to one count of felony harassment.[1] After sentence was imposed in 2006, Lynch was placed under the supervision of the Department of Corrections (DOC). During this supervisory period, Lynch was monitored by Mustain. A condition of Lynch's sentence prohibited him from having contact with his neighbor (the victim of his felony harassment conviction), Connie Laire.

In mid-September 2007, Lynch telephoned Mustain to report an interaction that he had with Laire. He reported that, while in the passenger seat of a car driven by a business partner, he had argued with asphalt workers who were laying speed bumps on the driveway leading up to his residence. Lynch reported that, during that time, Laire had exited her nearby residence and observed the scene. Lynch reported that he did not address Laire during the incident.

In late September, Laire contacted Mustain to discuss Lynch's conduct outside of her residence earlier that month. Mustain's notes from Laire's call read: "Per Connie she was out side with her hired help when P[2] and his friend drive up and started barking at the. [sic]. Per Connie P did not lok [sic] at her but was screaming at her and the workers about being on his property etc."

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[1] Lynch entered a guilty plea in accordance with North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

[2] The parties do not dispute that "P" in Mustain's notes referred to Lynch.

Shortly thereafter, Mustain and Dewing determined that Lynch had violated the no-contact condition of his felony harassment sentence and they approved his detention. In early October, Lynch was taken into custody and transported to a jail. He was released from detention one month later, at the end of October 2007.

More than nine years after his release from detention, in November 2016, Lynch filed a complaint against the State of Washington, Mustain, Dewing, and "Does 1 through 30," alleging that, in October 2007, he was unlawfully seized in violation of the Fourth Amendment, unlawfully arrested without probable cause in violation of the Fourth Amendment, unlawfully harmed while in custody in violation of the Eighth and Fourteenth Amendments, and that he was subjected to "false arrest/false imprisonment," negligence, and "trespass to personal property and/or conversion."

Lynch alleged that the foregoing wrongful conduct arose from when he was detained in October 2007 for violating the condition of his sentence prohibiting him from having contact with Laire. Specifically, Lynch alleged that, prior to and during his period of detention, he informed the defendants of his health problems, he was denied medical treatment, and, as a result, he "suffered." He further alleged that he did not receive his required medications, lost 12 pounds of weight, and, on one occasion, had been handcuffed to a wheelchair and lost consciousness. In addition, he alleged that he had been denied an attorney, that DOC refused to accelerate his violation hearing, that he

was transferred to three different jails, and that the records maintained by DOC misstated the date of the alleged violation.

Additionally, Lynch alleged that, upon his release, his clothes, wallet, money, identification, and keys were not returned to him. He alleged that the search for his property took weeks after his release and that, "eventually," his property was returned to him after being "misplaced" by DOC employees. His complaint did not set forth the date on which his property was alleged to have been returned to him.

The defendants moved to dismiss Lynch's complaint pursuant to CR 12(c).[3] The trial court granted the defendants' motion and dismissed Lynch's complaint.

II

In this matter, we are called upon to review the trial court's order dismissing Lynch's complaint pursuant to CR 12(c).

The rule provides:

> **Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

CR 12(c).

[3] The Defendants' dismissal motion was initially characterized as a CR 12(b)(6) motion, but their reply brief before the trial court indicated that they were, in actuality, seeking dismissal pursuant to CR 12(c).

We review de novo a trial court's dismissal of a claim pursuant to CR 12(c). Nw. Animal Rights Network v. State, 158 Wn. App. 237, 241, 242 P.3d 891 (2010) (citing Parrilla v. King County, 138 Wn. App. 427, 431, 157 P.3d 879 (2007)). In so doing,

> [w]e examine the pleadings to determine whether the plaintiff can prove any set of facts consistent with the complaint that would entitle the plaintiff to relief. N. Coast Enters., Inc. v. Factoria P'ship, 94 Wn. App. 855, 859, 974 P.2d 1257 (1999). The factual allegations contained in the complaint are accepted as true. N. Coast Enters., 94 Wn. App. at 859 (quoting Roth v. Bell, 24 Wn. App. 92, 94, 600 P.2d 602 (1979)).

Nw. Animal Rights Network, 158 Wn. App. at 241.[4]

A

Lynch contends that the trial court erred by dismissing his alleged § 1983 monetary damages actions against the State of Washington. We disagree.

42 U.S.C § 1983 provides a civil cause of action for monetary damages against any "person" who deprives another of "any rights, privileges, or immunities secured by" the United States Constitution.

Significantly, however, a sovereign state of the United States is not a "person" within the meaning of § 1983 and is, thus, not subject to a monetary damages suit. Lapides v. Bd. of Regents of Univ. Sys. of Ga., 535 U.S. 613, 617, 122 S. Ct. 1640, 152 L. Ed. 2d 806 (2002) ("Lapides' only federal claim against the State arises under 42 U.S.C. § 1983, that claim seeks only monetary damages, and we have held that a State is not a 'person' against whom a § 1983

[4] We may affirm the trial court's order dismissing Lynch's complaint pursuant to CR 12(c) on any basis supported by the record. State v. Costich, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

claim for money damages might be asserted."). Accord Will v. Mich. Dep't of State Police, 491 U.S. 58, 64, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989); Wash. State Republican Party v. Pub. Disclosure Comm'n, 141 Wn.2d 245, 285-86, 4 P.3d 808 (2000); Smith v. State, 135 Wn. App. 259, 270, 144 P.3d 331 (2006).

Lynch's complaint alleged that the State of Washington deprived him of various constitutional rights in violation of § 1983 and that, as a result, he is entitled to monetary damages against the State. As indicated, however, the State is not a "person" within the meaning of § 1983. Lapides, 535 U.S. at 617. Thus, Lynch's claims for money damages are not cognizable. Lapides, 535 U.S. at 617.

Hence, there is no basis in the pleadings to support Lynch's alleged § 1983 actions against the State. The trial court did not err by dismissing these claims.

B

Lynch next contends that the trial court erred by dismissing his § 1983 damages actions against Mustain and Dewing. Again, we disagree.

As pertinent here, Lynch's complaint alleged the following:

> On or about February 8, 2016, the King County Superior Court entered an order which provided as follows:
> (a) Mr. Lynch was permitted to withdraw his guilty plea in the matter;
> (b) A plea of **not guilty** was entered by the Court on behalf of the Mr. Lynch;
> (c) The conviction was **vacated**, and the case was **dismissed with prejudice**;
> (d) Mr. Lynch was released from all penalties and disabilities resulting from the offense; and

> (e) The Court directed that for all purposes, including responding to questions on employment applications, **Mr. Lynch may state that he has never been convicted of the crime.**

Given these allegations, Lynch contends that he accrued a cognizable monetary damages action pursuant to § 1983 against Mustain and Dewing when his conviction was vacated and dismissed by the superior court.

In support of this proposition, Lynch relies on the United States Supreme Court's opinion in Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994). The Court's opinion reads, in pertinent part:

> We think the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement, just as it has always applied to actions for malicious prosecution.
>
> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, **a § 1983 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 determination, or called into question by a federal court's issuance of a writ of habeas corpus**, 28 U.S.C. § 2254. **A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983.** Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Heck, 512 U.S. at 486-87 (bolded emphasis added) (italicized emphasis in original) (footnotes omitted).

As an initial matter, there is no dispute that Lynch's § 1983 monetary damages actions against Mustain and Dewing, if proved, would "necessarily imply" the invalidity of his conviction and sentence. Heck, 512 U.S. at 487. Moreover, as indicated, Lynch's complaint set forth that a superior court order vacated his conviction and dismissed his case.

However, Lynch's reliance on Heck is unavailing. The Court in Heck did not rule that vacation of a conviction or dismissal of a case established a cognizable § 1983 damages action. 512 U.S. at 486-87. Rather, the Court ruled that, when a party seeks to file a § 1983 action that necessarily implies the invalidity of a conviction or sentence, the party's § 1983 action becomes cognizable only when the underlying conviction or sentence is determined to have been *invalidated*, *i.e.*, deemed unconstitutional or unlawful. Heck, 512 U.S. at 486-87.

Nevertheless, relying on the foregoing trial court order, Lynch contends that, by vacating his sentence, the trial court, in actuality, invalidated his conviction and sentence. Lynch is mistaken.

The trial court order referenced in Lynch's complaint was an order entered pursuant to RCW 9.94A.640. This statutory provision reads, in pertinent part:

> **Vacation of offender's record of conviction.** (1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a *vacation of the offender's record of conviction*. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

> (2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.637; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.637; (f) the offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than five years have passed since the date the applicant was discharged under RCW 9.94A.637; or (g) the offense was a class C felony described in RCW 46.61.502(6) or 46.61.504(6).
>
> (3) Once the court *vacates a record of conviction* under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been *vacated* may state that the offender has never been convicted of that crime. *Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.*

(Emphasis added.)

There is no indication that RCW 9.94A.640 allows for the invalidation of an offender's conviction or sentence. By its plain terms, it provides not for a conviction's invalidation but, rather, for vacation of the record of conviction. RCW 9.94A.640(1), (3). Indeed, the word "invalid"—or any variant thereof—appears nowhere in RCW 9.94A.640. Moreover, subsection (3) of RCW 9.94A.640 presupposes the validity of the underlying conviction, setting forth that, "Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution." Thus, RCW 9.94A.640 lends no support to Lynch's argument.

Subsection (1) of RCW 9.94A.640 sets forth that a discharge of a sentence pursuant to RCW 9.94A.637 is a predicate to obtaining vacation of an offender's record of conviction pursuant to RCW 9.94A.640.

This statute provides, in pertinent part:

> (1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.
>
> . . . .
>
> (5) The discharge shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certificate of discharge shall so state. *Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes.* A certificate of discharge is not based on a finding of rehabilitation.
>
> (6) Unless otherwise ordered by the sentencing court, *a certificate of discharge shall not terminate the offender's obligation to comply with an order that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued*

RCW 9.94A.637 (emphasis added).

By its plain terms, RCW 9.94A.637 does not implicate the validity of an offender's sentence or the offender's underlying conviction. Indeed, the word "invalid" appears nowhere in this provision.

Instead, RCW 9.94A.637 sets forth the circumstances under which an offender's sentence may be discharged when the offender completes the requirements of the offender's sentence. Moreover, RCW 9.94A.637 permits the State, notwithstanding that the offender has obtained a certificate of discharge, to rely on the offender's conviction or sentence in a later criminal prosecution. RCW 9.94A.637(5), (6). In this light, the provisions of RCW 9.94A.637 presuppose that the offender's underlying sentence is valid. Thus, RCW 9.94A.637 does not support Lynch's contention.

Furthermore, there is nothing in either RCW 9.94A.637 or RCW 9.94A.640 that authorizes the trial court to issue findings of fact or reach a determination regarding the validity of an offender's conviction or sentence. Indeed, Lynch did not need to prove the invalidity of his conviction in order to obtain the relief he requested pursuant to subsections .637 and .640.

Thus, there is no indication that Lynch ever established the invalidity of the judgment entered on his conviction or the sentence imposed thereon. Because Lynch has not established that his conviction or sentence was invalid, his § 1983 damages actions against Mustain and Dewing are not cognizable. Heck, 512 U.S. at 486-87.

Accordingly, there is no basis in the pleadings to support Lynch's § 1983 actions against Mustain and Dewing. There was no error in dismissing the claims.

C

Lynch next contends that the trial court erred by dismissing his state law tort actions against the State, Mustain, and Dewing. Once again, we disagree.

> As a general rule, a tort "cause of action accrues at the time the act or omission occurs." In re Estates of Hibbard, 118 Wn.2d 737, 744, 826 P.2d 690 (1992). The discovery rule is an exception to the general rule. Hibbard, 118 Wn.2d at 744-45. Application of the discovery rule extends to "claims in which plaintiffs could not immediately know of the cause of their injuries." Hibbard, 118 Wn.2d at 750.
>
> > In certain torts, . . . injured parties do not, or cannot, know they have been injured; in these cases, a cause of action accrues at the time the plaintiff knew or should have known all of the essential elements of the cause of action.
>
> White v. Johns-Manville Corp., 103 Wn.2d 344, 348, 693 P.2d 687 (1985); see also Deggs v. Asbestos Corp., 186 Wn.2d 716, 727, 381 P.3d 32 (2016).
>
> Under the discovery rule, a cause of action accrues when the plaintiff "knew or should have known the essential elements of the cause of action." Allen[v. State], 118 Wn.2d [753,] 757-58[, 826 P.2d 200 (1992)]. . . . We may decide the applicability of the discovery rule as a matter of law where the facts are subject to only one reasonable interpretation. Allen, 118 Wn.2d at 760.

Brown v. Dep't of Corr., 198 Wn. App. 1, 12, 392 P.3d 1081 (2016).

The statutory limitation period applicable to both an action for negligence and an action for trespass upon personal property is three years. RCW 4.16.080(2); Woods View II, LLC v. Kitsap County, 188 Wn. App. 1, 20, 352 P.3d 807 (2015) (negligence); Hudson v. Condon, 101 Wn. App. 866, 872-73, 6 P.3d 615 (2000) (conversion). The torts of false arrest and false imprisonment "are subject to a two-year statute of limitations under RCW 4.16.100." Southwick v.

Seattle Police Officer John Doe #s 1-5, 145 Wn. App. 292, 297, 186 P.3d 1089 (2008).[5]

Accepting Lynch's allegations as true, the misconduct by the State, Mustain, and Dewing occurred in 2007. Lynch filed the complaint here at issue in 2016, nine years after the alleged misconduct occurred.

There is nothing in the pleadings that supports a later accrual date for any of Lynch's alleged state law tort actions.[6] Thus, these actions were filed well beyond their applicable statutory limitation period. Accordingly, the trial court did not err by ordering dismissal of the claims. There was no error.[7]

Affirmed.

Dwyer, J.

We concur:

Leach, J.

Schindler, J.

[5] To the extent that any of these tort claims arose from acts independent of the underlying conviction and are contended by Lynch to be the basis for a § 1983 claim, that federal claim has the same statutory limitation period as its analogous state claim. Southwick, 145 Wn. App. at 297 (citing Robinson v. City of Seattle, 119 Wn.2d 34, 86, 830 P.2d 318 (1992)).

[6] Lynch relies on our opinion in Brown, 198 Wn. App. 1, for the proposition that his state law tort actions did not accrue until his conviction was vacated in 2016. His reliance is unavailing. There is nothing in the pleadings submitted that put into doubt that, in 2007, Lynch "'knew or should have known all of the essential elements of the cause of action'" for each of his alleged tort claims. Brown, 198 Wn. App. at 12 (quoting White, 103 Wn.2d at 348).

[7] Given our disposition of this matter, the parties' motions on appeal are denied.

HON. MONICA BENTON

FILED
KING COUNTY, WASHINGTON
JUN 01 2017
SUPERIOR COURT CLERK
BY Jennifer Marshall
DEPUTY

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STEPHEN THOMAS LYNCH, Plaintiff, v. STATE OF WASHINGTON, and CHERYL MUSTAIN, in her capacity as a corrections officer for the state of Washington, and as an individual, and KIMBERLI DEWING, in her capacity as a corrections officer for the state of Washington, and as an individual, and DOES 1 through 30, Defendants.	NO. 16-2-27265-7KNT ORDER ON DEFENDANTS' CR 12(b)(6) MOTION TO DISMISS GRANTING THE MOTION ~~[PROPOSED]~~

THIS MATTER HAS COME ON before the Court on defendants' CR 12(b)(6) Motion to Dismiss.

In deciding this motion, the Court has considered

1) Defendant's motion and declaration of Jana Hartman
2) Plaintiff's response;
3) Defendant's reply in support;
4) Declaration of Jana Hartman
5. Complaint

The Court has not considered any factual matters outside the record before it.

A-14

ATTORNEY GENERAL OF WASHINGTON
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ORIGINAL

HAVING CONSIDERED the matters set forth above, and the arguments of defendants and plaintiff in conjunction with this motion;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. ~~_____~~, the Court dismisses plaintiff's Complaint, as alleged against ~~the~~ all defendants, in its entirety.

DONE THIS 31 day of May, 2017

HONORABLE MONICA BENTON

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A-15

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