NO. 96130-1

SUPREME COURT OF THE STATE OF WASHINGTON

STEPHEN THOMAS LYNCH,

Plaintiff/Appellant,

v.

STATE OF WASHINGTON,

Defendants/Respondents.

STATE OF WASHINGTON'S ANSWER TO APPELLANT'S PETITION FOR REVIEW

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I. INTRODUCTION

Stephen Lynch seeks review by this Court of the Court of Appeals' decision affirming dismissal, under CR 12(c), of the action he filed against the State of Washington and Department of Corrections (DOC) community correctional officers Cheryl Mustain and Kimberli Dewing. In his petition, Mr. Lynch contends that the Court of Appeals erred in dismissing his claims because his pleadings set forth legally sufficient and timely actions against the State respondents pursuant to 42 U.S.C. § 1983, as well as state law tort claims for negligence, trespass upon personal property, false arrest, and false imprisonment. There is nothing in the pleadings that supports the assertion that Mr. Lynch has alleged a cognizable § 1983 action or timely filed his state law tort claims. The Court of Appeals correctly held, under well-settled law, that the State respondents were entitled to judgment on the pleadings:

(1) Under *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 64, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989), the State of Washington and its employees (acting in their official capacities) are not "persons" capable of violating Mr. Lynch's civil rights under § 1983. *Accord 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);

(2) Under *Heck v. Humphrey*, 512 U.S. 477, 486-87, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), there was no legal basis for Mr. Lynch's § 1983 claim because his underlying conviction was never *invalidated*, rather, under RCW 9.94A.637 and 9.94A.640, the trial court merely *vacated the record* of his conviction; and

(3) Where Lynch's conviction was not *invalidated* under *Heck*, Mr. Lynch's pleadings, on their face, demonstrate that he filed his state law tort claims nine years after the events alleged in his complaint—long past the statute of limitations for the alleged torts.

Lynch's claims fail as a matter of law. None of the issues he identifies presents a significant question of law under the United States Constitution or an issue of substantial public interest.

II. IDENTITY OF RESPONDENTS

Respondents are the State of Washington and DOC community correctional officers Mustain and Dewing.

III. DECISION BELOW

Lynch v. State, 2018 WL 3120840, filed June 25, 2018 (Division One, 2018) is an unpublished decision. The slip opinion is attached as Appendix A to the Petition for Review.

IV. ISSUES PRESENTED FOR REVIEW

1. Whether Mr. Lynch's § 1983 action, insofar as it was an action against the State of Washington or the DOC corrections officers in their official capacities, was barred, under *Will v. Michigan Dep't of State Police,* because the State of Washington, and its officers acting in their official capacities, are not "persons" as that term is used in 42 U.S.C. § 1983?

2. Whether the Court of Appeals correctly found, under *Heck v. Humphrey*, there was no legal basis for Mr. Lynch's § 1983 claim because his underlying conviction was not *invalidated*, but rather, under RCW 9.94A.637 and 9.94A.640, the trial court had merely *vacated the record* of his conviction?

3. Whether the Court of Appeals correctly found, in a case where *Heck v. Humphrey* did not determine the date Mr. Lynch's action accrued, that, on the face of his pleadings, it had been nine years since the events that served as the basis for his state law complaints, and, consequently, all were untimely under the applicable statutes of limitations?

4. Whether the Court of Appeals correctly applied the standard for granting a CR 12(c) motion because neither the trial court nor the Court of Appeals construed any facts against Mr. Lynch?

V. STATEMENT OF THE CASE

In 2006, Mr. Lynch pled guilty (under *Alford*) to one count of felony harassment.[1] After the trial court imposed a sentence in 2006, Mr. Lynch was placed under the supervision of DOC. During this supervisory period, Mr. Lynch was monitored by Mustain. A condition of Mr. Lynch's sentence prohibited him from having contact with his neighbor Connie Laire (the original victim of his felony harassment conviction). CP 3-4.

[1] The Court of Appeals affirmed the factual basis for Mr. Lynch's conviction in a prior unreported case. *State v. Lynch*, 175 Wn. App. 1040 (2013). ER 201.

In mid-September 2007, Mr. Lynch telephoned DOC corrections officer Mustain to describe an interaction that he had with Ms. Laire. He self-reported that, while in the passenger seat of a car driven by his business partner, he had argued with asphalt workers who were laying speed bumps on the driveway leading up to his residence. Mr. Lynch reported that, during that time, Ms. Laire had exited her nearby residence and observed the scene. Mr. Lynch reported that he did not address Ms. Laire during the incident. CP 5-6.

In late September, Ms. Laire contacted Mustain to discuss Mr. Lynch's conduct outside of her residence earlier that month. Mustain's notes from Ms. Laire's call read: "Per Connie she was outside with her hired help when [Lynch] and his friend drive up and started barking at the. [sic]. Per Connie [Lynch] did not lok [sic] at her but was screaming at her and the workers about being on his property etc." CP 6.

Shortly thereafter, Mustain and Dewing determined that Mr. Lynch had violated the no-contact condition of his felony harassment sentence and approved his detention. In early October, Mr. Lynch was taken into custody and transported to jail. He was released from detention one month later, at the end of October 2007. CP 6-7.

More than nine years after his release from detention, in November 2016, Mr. 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." CP 1-20.

Mr. Lynch alleged that this wrongful conduct arose from his detention in October 2007 for violating the condition of his sentence prohibiting him from having contact with Ms. Laire. Specifically, Mr. Lynch alleged that, prior to and during his period of detention, he informed the State defendants of his health problems, was denied medical treatment, and, as a result, "suffered." Mr. Lynch further alleged in the Complaint filed in this action that he did not receive his required medications while incarcerated, lost 12 pounds of weight, and, on one occasion, was 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. CP 8-10.

Additionally, Mr. Lynch claimed 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. CP 11-12.

The State respondents initially moved to dismiss Mr. Lynch's complaint pursuant to CR 12(b)(6) because it failed to state a claim upon which relief could be granted and later (in the defendants' reply brief) under CR 12(c). The trial court granted the defendants' motion and dismissed Mr. Lynch's complaint. In accordance with *State v. Costich*, 152 Wn. 2d 463, 477, 98 P. 3d 795 (2004), the Court of Appeals affirmed the trial court's dismissal under CR 12(c).

VI. REASONS WHY REVIEW SHOULD BE DENIED

A. The Issues Identified by the Petition Are Not Appropriate for Review by this Court Because the Court of Appeals Followed Existing Law and Created No New Precedent

1. It is well-settled law that, under 42 U.S.C. § 1983, neither the State of Washington nor any of its officials (acting in their official capacities), are "persons" who may be charged with violating Mr. Lunch's civil rights.

The Court of Appeals correctly held that the State of Washington and both DOC corrections officers (in their official capacities) should be dismissed from this litigation as a matter of law because they are not

"persons" as that term is used in 42 U.S.C. § 1983. Mr. Lynch does not appear to contest this well-supported ruling.

In *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989), the Supreme Court directly resolved the question of whether a state or state official may properly be characterized as a "person" under 42 U.S.C. § 1983. It held that neither a state nor its official acting in their official capacities are "persons" within the meaning of § 1983. *Id.*, 491 U.S. at 71. The Court explained that § 1983 "does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity" or Congress specifically overrode that immunity—and "Congress, in passing § 1983, had no intention to disturb the States' Eleventh Amendment immunity." *Id.* at 66. The Court also held that a suit against a state official in his or her official capacity is not a suit against the official, but rather is a suit against the official's office, and thus is no different from a suit against the state itself. *Id.* at 71.

Since *Will*, it has been clear that states and state officials sued in their official capacities are not "persons" who can be sued for money damages under 42 U.S.C. § 1983, as this Court has recognized. *See Wash. Trucking Ass'ns v. State Emp't Sec. Dep't*, 188 Wn.2d 198, 208 n.8,

393 P.3d 761, *cert. denied*, 138 S. Ct. 261, 199 L. Ed. 2d 124 (2017); *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245, 285-86, 4 P.3d 808 (2000). This aspect of the Court of Appeals decision follows well-settled precepts and does not require review by this Court.

2. It is well-settled law that, under *Heck v. Humphrey*, Mr. Lynch's criminal charge must be *invalidated* as a pre-condition to any claim that his civil rights were violated under 42 U.S.C. § 1983.

Mr. Lynch's primary argument is that after he made use of the procedure for *vacating the record* of his conviction articulated in RCW 9.94A.637 and 9.94A.640, he should be considered "innocent"[2] and placed in the same category as individuals whose criminal conviction was *invalidated* under *Heck v. Humphrey*. The Court of Appeals correctly found this argument to be specious.

Heck v. Humphrey, 512 U.S. at 486-87 requires that:

> [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.

[2] Petition for Review, p. 5.

After a careful examination of the language of RCW 9.94A.637 and 9.94A.640, the Court of Appeals found that those statutes satisfied none of the criteria articulated in *Heck*, and that, in particular, certification under these statutes did not *invalidate* a conviction as *Heck* requires. As the Court of Appeals stated:

> 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.

Lynch, Slip Opinion at 9 (emphasis added).

The Court of Appeals found RCW 9.94A.637 similarly unsupportive:

> 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.

Lynch, Slip Opinion at 10-11.

This aspect of the Court of Appeals decision follows well-settled case law and does not require review by this Court.

B. There are No Facts Petitioner Might Allege, Consistent With the Complaint, That Might Raise An Issue Regarding the Statute of Limitations That Would Require Review By This Court

Mr. Lynch alleges that his state law tort claims did not accrue until after his conviction was vacated under RCW 9.94A.637 and 9.94A.640. There is no basis for his claim. The Court of Appeals correctly found, in a case where *Heck v. Humphrey* did not determine the date Mr. Lynch's action accrued, that, on the face of his pleadings, it had been nine years since

the events that served as the basis for his state law complaints, and, consequently, all of his claims were untimely under the applicable statutes of limitations. It is state law that establishes the statute of limitations for personal-injury torts. *See Wallace v. Kato*, 549 U.S. 384, 387-92, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007). The *Wallace* court explicitly held that "the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process." *Id.* at 397. 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). The torts of false arrest and false imprisonment "are subject to a two-year statute of limitations under RCW 4.16.100." As the Court of Appeals stated:

> 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. 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.

Lynch, Slip Opinion at 13.

Lynch heavily relies upon *Manuel v. City of Joliet,* 137 S. Ct. 911, 197 L. Ed. 2d 312, (2017). However, the *Manuel* court did not decide when a statute of limitations begins, and it did not purport to change or limit *Heck* in any respect. Furthermore, in *Manuel*, the charges were dismissed before Manuel went to trial, which factually distinguishes that case from both *Heck* and this case.

There are no facts that might alter the application of the statute of limitations to the state tort claims alleged by Mr. Lynch. This aspect of the Court of Appeals decision follows well-settled principles and does not require review by this Court.

C. The Trial Court and Court of Appeals Applied to Correct Standard When Considering a CR 12 Motion on the Pleadings

Mr. Lynch appears to attack the standard of review used by both the trial court and Court of Appeals in granting what he refers to as a CR 12(b)(6) motion.[3] However, the State's motion was decided as a CR 12(c) motion, not a CR 12(b)(6) motion. Dismissal under CR 12 is only appropriate where it appears beyond doubt that the plaintiff cannot prove any set of facts that would justify recovery. *Lowe v. Rowe*, 173 Wn. App. 253, 258, 294 P.3d 6 (2012). A motion to dismiss for failure to state a claim under CR 12(b)(6) and a motion for judgment on the

[3] Petition for Review, p. 8.

pleadings under CR 12(c) raise identical issues and are subject to the same standard of review. *Id.*

Mr. Lynch incorrectly argues that "the appellate panel appears to have construed the complaint against Mr. Lynch and in favor of the State…".[4] He offers no further explanation for this conclusory statement. The correct standard was properly applied here. Neither the trial court nor the Court of Appeals construed the facts against Mr. Lynch as he asserts—the case was dismissed because even assuming the truth of every fact he alleged, a § 1983 action was not available to him *as a matter of law*, and the statute of limitations had run *as a matter of law*. The Court of Appeals noted they reviewed the trial court's dismissal of the claims *de novo*, and that all factual allegations contained in the complaint are as accepted as true. *Lynch*, Slip Opinion at 2.

VII. CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW

The standard of review of civil rights complaints and the statute of limitations in civil rights cases are well-settled law. Mr. Lynch's disagreement with that settled law does not create an issue of substantial public interest under RAP 13.4(b)(4).

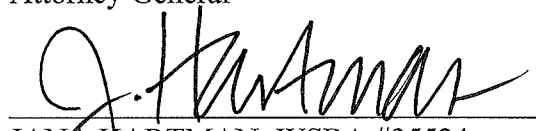
[4] Petition for Review, p. 9.

VIII. CONCLUSION

The Court of Appeals correctly determined that Lynch's claims are barred by the statute of limitations. The petition for review should be denied.

RESPECTFULLY SUBMITTED this 21st day of September, 2018.

ROBERT W. FERGUSON
Attorney General



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CERTIFICATE OF SERVICE

I certify that on this 21st day of September, 2018, I caused a true and correct copy of this Answer to Petition for Review to be served on the following via email:

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APPENDIX A

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.

AGO TORTS TACOMA

September 21, 2018 - 11:09 AM

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