

No. 16-4179

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

Milan Brown
Plaintiff/Appellant,

v.

Thomas J. Dart, Sheriff of Cook County, and
County of Cook,
Defendants/Appellees.

Appeal From The United States District Court
For the Northern District of Illinois
Case No. 15-cv-11835
The Honorable Judge Edmund Chang

**BRIEF AND REQUIRED SHORT APPENDIX OF
PLAINTIFF-APPELLANT, MILAN BROWN**

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Seventh Circuit Rule 26.1, counsel for Plaintiff-Appellant states as follows:

1. The full name of every party that the undersigned attorneys represent in this case is:

Milan Brown

2. The names of all law firms and the partners and associates that appeared for the party now represented by us in the trial court or are expected to appear in this Court are:

Alexander N. Loftus, Esq.
Stoltmann Law Offices
Voelker Litigation Group

3. The parent corporations and any publicly held companies that own ten percent or more of the stock of the party represented by the attorneys: N/A

Respectfully submitted,

/s/ Alexander N. Loftus

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JURISDICTIONAL STATEMENT

On December 30, 2016, Plaintiff Milan Brown (“Brown”) filed a complaint in the District Court alleging, inter alia, civil rights claims pursuant to 42 U.S.C. § 1983 against Defendants Thomas J. Dart and County of Cook (“Defendants”). R. 1, Plaintiff’s Complaint.¹ The lower court had jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a), and had jurisdiction over the supplemental state law claims pursuant to 28 U.S.C. § 1367(a).

On September 19, 2011, the District Court granted the Defendants’ Motion for Judgment on the Pleadings. A. 1-12. Plaintiff timely filed his Notice of Appeal on December 19, 2016. R. 31.

The Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

I. WHETHER A CLAIM FOR DEPRIVATION OF LIBERTY ACCRUES ONLY AFTER AN INMATE IS RELEASED FROM A BOND FOLLOWING HIS RELEASE FROM JAIL?

II. WHETHER HOLDING AN INDIVIDUAL PURSUANT TO A BOND FOR ONE MONTH BEYOND HIS SCHEDULED RELEASE DATE IS A CONTINUING VIOLATION OF WRONGFULLY HOLDING AN INDIVIDUAL IN JAIL FOR THREE MONTHS PRIOR.

¹ Citations to the required Short Appendix are in the form “A. ____.” Citations to the record are in the form “R. ____”.

STATEMENT OF THE CASE

Plaintiff, Brown, was an inmate in the Cook County Jail (“CCJ”) serving time for a probation violation and was due to be released on or about September 12, 2013. Instead, due to the complete disorder of the CCJ and policies implemented by the Sheriff, he remained incarcerated in deplorable conditions until December 16, 2013, three months after he had served his debt to society. R.8 ¶ 2. CCJ staff failed to accurately record Brown’s release date and informed Brown in approximately August 2013 that he would not be released until March 4, 2014. On September 10, 2013, Brown filed a Petition for Writ of Habeas to address the apparent error, but CCJ staff failed to transport him to court for the first three times the Petition was to be heard thereby resulting in two additional months of imprisonment. On December 16, 2013, the Petition was finally heard and the Court ordered him held on bond.

On December 30, 2015, less than two years after his actual release, Brown filed his *pro se* complaint against Defendants. R. 1. On June 14, 2016, Brown recruited counsel who filed an Amended Complaint. R. 8. Defendants answered the complaint and Defendants moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) on the grounds that all of Brown’s claims are time-barred. *See* R. 14. On November 28, 2016, the District Court entered judgment on the pleadings in favor of Defendants. R. 28. On December 19, 2016, Brown filed a timely Notice of Appeal. R. 30.

On or about July 19, 2013, Brown was sentenced to 79 days of imprisonment. R. 8. ¶ 13. The criminal court stated at the July 19 hearing: “The sentence ends on September 12.” R. 8. ¶ 14.

On September 10, 2013, after being informed by CCJ staff that his release date was March 4, 2014, instead of September 12, 2013, Brown filed a Petition for Writ of Habeas Corpus so he could be released on September 12, 2013 as ordered by the Court on July 19, 2013. R. 8. ¶ 15. The Petition for Writ of Habeas Corpus was set for hearing on October 10, 2013. R. 8. ¶ 16.

On three separate occasions CCJ staff refused to transport Brown to court for his Petition for Writ of Habeas Corpus. First, on October 10, 2013, CCJ staff refused to transport Brown to Court and the Petition was continued to October 24, 2013. R. 8. ¶ 3. Again, October 24, 2013, CCJ staff again refused to transport Brown to Court and the Petition was continued to October 31, 2013. R. 8. ¶ 18. Finally, on October 31, 2013, CCJ staff yet again refused to transport Brown to Court and the petition was continued to November 4, 2013. R. 8. ¶ 19.

On November 4, 2013, CCJ staff finally transported Brown to Court but the judge was unable to hear the Petition and the matter was continued again to December 16, 2013. R. 8. ¶ 20. While Brown waited for CCJ staff to transport him for a hearing on his Petition he sat in the mold, rat, and roach infested CCJ dungeon. R. 8. ¶ 25-6.

Finally, on December 16, 2013, three months after filing the Petition, and over three months after he was supposed to be discharged, Brown was able to present his Petition. When it finally heard the Petition, the criminal court stated on

December 16, 2013: “[E]verybody agreed it was 300 days, and the only issue was when it would start and when it would end, and there was no argument about the fact that it should end like September 12th.... Now he is in jail three months longer than I thought he would be in jail. I thought he was getting out on September 12”.

R. 8. ¶ 22. On December 16, 2013, the Court ordered him released on a \$50,000 bond and set the matter for hearing on January 14, 2014 to resolve whether he in fact had served his sentence. R. 8. ¶ 23. On or about January 17, 2014, Plaintiff was re-sentenced and the bond was released. R. 8. ¶ 24. Brown was not free until January 17, 2014. Between December 16, 2013 and January 17, 2014, Brown’s liberty was greatly limited pursuant to a \$50,000 bond.

Among other restrictions while on bond, Brown was unable to leave the state, required to appear in court, prohibited from exercising his Second Amendment rights, and could potentially be returned to jail depending on the Court’s ruling on January 17, 2014. *See* 725 ILCS 5/110-10. Brown was not released from imprisonment in Illinois until January 17, 2014.

SUMMARY OF ARGUMENT

The District Court’s Order granting judgment on the pleadings should be reversed for four reasons: (1) Brown’s cause of action did not accrue until he was released from the restrictions of the bond on January 17, 2014; (2) Brown’s cause of action did not accrue until the criminal court confirmed his correct release date on January 17, 2014; (3) Assuming, *arguendo*, Brown’s claims accrued prior to Brown being released from the bond, being held on bond was a continuing violation extending the statute of limitations; and (4) Assuming, *arguendo*, the claim accrued prior to Brown being released from the bond, the statute of limitations was tolled.

ARGUMENT

I. STANDARD OF REVIEW.

An appellate court reviews *de novo* a district court's order granting judgment on the pleadings under Fed. R. Civ. P. Rule 12(c). *Barr v. Bd. of Trs. of W. Ill. Univ.*, 796 F.3d 837, 839 (7th Cir. 2015). A motion for judgment on the pleadings is subject to the same standard as a motion to dismiss under Rule 12(b)(6). *Hayes v. City of Chi.*, 670 F.3d 810, 813 (7th Cir. 2012). In ruling on a motion for judgment on the pleadings, the court must accept all wellpled allegations as true and view the alleged facts in the light most favorable to the non-moving party. *Id.* Judgment on the pleadings is proper if it appears beyond doubt that the non-moving party cannot prove any set of facts sufficient to support his claim for relief. *Id.* In ruling on a motion for judgment on the pleadings, the court considers the pleadings alone, which consist of the complaint, the answer, and any documents attached as exhibits. *N. Ind. Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 452 (7th Cir. 1998).

II. BROWN'S CAUSE OF ACTION DID NOT ACCRUE UNTIL HE WAS RELEASED FROM THE RESTRICTIONS OF THE BOND ON JANUARY 17, 2014.

Applying *de novo* review, the District Court should be reversed because up until January 17, 2014 Brown was still confined to the State of Illinois without the right to bear arms.

The statute of limitations for § 1983 claims in Illinois is two years. *Draper v. Martin*, 664 F.3d 1110, 1113 (7th Cir. 2011). The accrual date of a § 1983 cause of action is a question of federal law that is not resolved by reference to state law. Aspects of § 1983 which are not governed by reference to state law are governed by

federal rules conforming in general to common-law tort principles. *See Carey v. Phipus*, 435 U.S. 247, 257-258, (1978). Under those principles, it is “the standard rule that [accrual occurs] when the plaintiff has ‘a complete and present cause of action’”, *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997) (quoting *Rawlings v. Ray*, 312 U.S. 96, 98 (1941)), that is, when “the plaintiff can file suit and obtain relief,” *Bay Area Laundry, supra*, at 201, 118 S. Ct. 542, 139 L. Ed. 2d 553; *Wallace v. Kato*, 549 U.S. 384, 388 (2007). In this case, Brown could not file suit and obtain relief until after January 17, 2014, when he was free to leave the state and possess a firearm. R. 8. ¶ 24.

“Limitations begin to run against an action for false imprisonment when the alleged false imprisonment ends.” *Wallace*, 549 U.S. at 389. The Supreme Court defined imprisonment very broadly to include being held subject to a bond. (“false imprisonment consists of detention without legal process, a false imprisonment ends once the victim becomes held pursuant to such process--when, for example, he is bound over by a magistrate or arraigned on charges.”) *Id.* The Court explained, “Every confinement of the person is an imprisonment, whether it be in a common prison or in a private house, or in the stocks, or even by forcibly detaining one in the public streets; and when a man is lawfully in a house, it is imprisonment to prevent him from leaving the room in which he is.” *Id.* In this case, the unlawful deprivation of liberty did not end until the bond was released and Brown was free to leave the state and carry a firearm on January 17, 2014.

The *Wallace* Court held the statute of limitations is triggered without physical imprisonment in a cell. The Court explained, “We conclude that the statute of limitations on petitioner’s § 1983 claim commenced to run when he appeared before

the examining magistrate and was bound over for trial.” *Wallace*, 549 U.S. at 391. Thus, the Court held that false imprisonment begins when the defendant is held pursuant to a bond without actually being incarcerated. Accordingly, following *Wallace*, an unlawful deprivation of liberty as alleged here would not end until the bond was released on January 17, 2014. Therefore, according to controlling Supreme Court precedent, the final date of Brown’s imprisonment was January 17, 2014 at which time his claim accrued.

In addition to being contrary to controlling Supreme Court precedent, the District Court’s opinion is directly at odds with *Hernandez v. Sheahan*, 1993 U.S. Dist. LEXIS 9284, 17-19 (N.D. Ill. July 7, 1993) which stood for twenty-four years as the definition of confinement. This Court should apply *Hernandez* and reverse the District Court because Brown’s liberty was restrained until the I-bond was released.

The *Hernandez* court held:

“Hernandez argues that his pendent state false imprisonment claim is not time-barred by the Act. We agree. According to Hernandez, the final date of his false imprisonment was March 19, 1992, the date that he was released from the electronic monitoring custody of Sheahan, not March 3, 1992, the date he was released on bond. As indicated by Hernandez and not disputed by Sheahan, the case law concerning the definition of false imprisonment is in accord with this position. *See, e.g., Albright v. Oliver*, 975 F.2d 343, 346 (7th Cir. 1992) (holding “**the tort of false imprisonment does not require close confinement . . . the prison could indeed be as large as an entire state**”); *Baltz v. Shelley*, 661 F. Supp. 169, 181 (N.D. Ill. 1987) (ruling “common-law tort of false imprisonment is an **unlawful restraint of an individual’s personal liberty or freedom of locomotion**”).... Because we find Hernandez’s liberty was so restrained in this manner until March 19, 1992, we conclude that Hernandez’s state false imprisonment claim falls within the Act’s statute of limitations period.

Hernandez, 1993 U.S. Dist. LEXIS 9284 at 17-19.

Brown was falsely imprisoned in Illinois until January 17, 2014 when the bond

was released and free to leave Illinois and allowed to possess a firearm. Therefore, according to *Hernandez* and *Wallace*, the final date of Browns' imprisonment was January 17, 2014 at which time his claim accrued.

The District Court erroneously relied on dicta in *Williams v. City of Chi.*, 2014 WL 3787422, at *3 (N.D. Ill. July 30, 2014) which is distinguishable and inapplicable dicta because the Plaintiff's claims in *Williams* would have been time-barred had the Court counted the limitations period from the date of the release from jail or the release of bond.

III. BROWN'S CAUSE OF ACTION DID NOT ACCRUE UNTIL THE CRIMINAL COURT CONFIRMED HIS CORRECT RELEASE DATE ON JANUARY 17, 2014.

Any ruling by a civil court prior to January 17, 2014 would necessarily implicate the validity of the continued incarceration therefore Brown's claim did not accrue until January 17, 2014 when the judge confirmed, over the State's Attorney's objection that Brown should have been release months earlier. The Seventh Circuit recently explained: "If the claimed tort occurred and was completed before the conviction ... the claims accrue immediately upon the completion of the tort. If the claimed tort continued through, or beyond, the point of conviction, the court must ask whether the claims would directly implicate the validity of the conviction. If the claims would not directly implicate the validity of the conviction, the court should follow the standard discovery rule If the claim would directly implicate the validity of the conviction, then *Heck* ... come[s] into play and the claim does not accrue until the conviction has been disposed of in a manner favorable to the plaintiff." *Gekas v. Vasiliades*, 814 F.3d 890, 894-895 (7th Cir. 2016). In this case, the alleged deprivation of liberty was valid until the criminal court ruled on January

17, 2014, released the bond, and re-sentenced Brown to correct the error. R. 8 ¶ 24. Therefore, pursuant to *Heck*, Brown's *pro se* complaint was timely filed.

IV. ASSUMING, ARGUENDO, BROWN'S CLAIMS ACCRUED PRIOR TO BROWN BEING RELEASED FROM THE BOND, BEING HELD ON BOND WAS A CONTINUING VIOLATION EXTENDING THE STATUTE OF LIMITATIONS.

The continuing violations doctrine postpones the start of the limitations period where the defendant inflicts continuing and accumulating harm, and then allows the plaintiff to recover for all harm caused by the continuing violation, even harm that occurred outside what would otherwise be the limitations period. *See Heard v. Sheahan*, 253 F.3d 316, 319 (7th Cir. 2001). The District Court irrationally held that Brown being restrained in the State of Illinois and not be allowed to possess a firearm is not harmful to Brown. To hold needlessly depriving an individual of his right to leave the state or bear arms would be contrary to controlling precedent and the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *Albright v. Oliver*, 975 F.2d 343, 346 (7th Cir. 1992).

“The continuing violation doctrine allows a plaintiff to get relief for a time-barred act by linking it with an act that is within the limitations period. For purposes of the limitations period, courts treat such a combination as one continuous act that ends within the limitations period” *Selan v. Kiley*, 969 F.2d 560, 564 (7th Cir. 1992). A violation is considered “continuing” if “it would be unreasonable to require or even permit [a plaintiff] to sue separately over every incident of the defendant's unlawful conduct.” *Heard*, 253 F.3d at 319 (holding that an Eighth Amendment deliberate indifference claim accrued not when the prisoner was denied medical care but when he was released from jail, finding that “[t]he injuries about which the plaintiff is

complaining . . . are the consequence of a numerous and continuous series of events”). The holding in *Heard*, allowing Plaintiff to not file suit until he is actually release is applicable here, where Brown was not released until January 17, 2014.

V. ASSUMING, ARGUENDO, THE CLAIM ACCRUED PRIOR TO BROWN BEING RELEASED FROM THE BOND, THE STATUTE OF LIMITATIONS WAS TOLLED.

Brown did not have a cognizable claim until after the criminal court ruled in his favor on January 17, 2014. Prior to that date, Brown could not file suit because he was still in the custody of the County of Cook pursuant to a bond and the criminal court had yet to rule on whether he was to remain incarcerated longer due to the County of Cook’s objections. R. 8, Exhibit B.

When a limitations period is equitably tolled, the statute of limitations ceases to run for a period of time. *IPF Recovery Co. v. Ill. Ins. Guar. Fund*, 356 Ill. App. 3d 658, 826 N.E.2d 943, 947-48,(1st. Dist. 2005) (“equitable tolling is an exception to the general rule that a statute of limitations is not tolled absent authorization from a statute”). Although the accrual analysis in a § 1983 case is governed by federal law, the tolling analysis is governed by state law. *Savory v. Lyons*, 469 F.3d 667, 672 (7th Cir. 2006); *Shropshar v. Corp. Counsel of the City of Chicago*, 275 F.3d 593, 596 (7th Cir. 2001). The Seventh Circuit has stated that equitable tolling “permits a plaintiff to sue after the statute of limitations has expired if through no fault or lack of diligence on his part he was unable to sue before, even though the defendant took no active steps to prevent him from suing.” *Singletary v. Cont’l Ill. Nat’l Bank & Trust Co. of Chicago*, 9 F.3d 1236, 1241 (7th Cir. 1993). In this case, *Brown* could not file suit until the criminal court ruled he had in fact served his full sentence. Up

until January 17, 2014 there was some question as to what his sentence was, a fact strenuously argued by the State's Attorney. *See* R. 8 Exhibit B.

CONCLUSION

For the foregoing reasons, the judgment of the lower court should be reversed and the case remanded for further proceedings.

Dated: March 3, 2017

Respectfully Submitted,

By: /Alexander N. Loftus
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CERTIFICATE OF COMPLIANCE

I, Alexander N. Loftus, hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), because this brief contains 3,086 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and I hereby certify that this brief complies with Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the appendix.

by: /Alexander N. Loftus
 Alexander N. Loftus

CERTIFICATE OF SERVICE

The undersigned, counsel for Plaintiff-Appellant, hereby certifies that on March 3, 2017 a true and correct copy of the foregoing Appellant's Brief was served electronically on all counsel via the CM/ECF system.

by: /Alexander N. Loftus
 Alexander N. Loftus

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District Court Memorandum Opinion Dated November 28, 2016..... 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MILAN JAMES BROWN,)	
)	
Plaintiff,)	No. 15 C 11835
)	
v.)	
)	Judge Edmond E. Chang
THOMAS J. DART, SHERIFF OF COOK)	
COUNTY, and COOK COUNTY, ILLINOIS)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Milan James Brown, a former inmate at Cook County Jail, brings this civil-rights lawsuit against Cook County Sheriff Thomas Dart, as well as the County itself.¹ *See* R. 8, First Am. Compl.² In his complaint, Brown generally alleges that the Defendants unlawfully imprisoned him in the Jail beyond the term of his sentence and subjected him to inhumane prison conditions. *Id.* Brown asserts that the Defendants violated his rights under the Fourth, Eighth, and Fourteenth Amendments to the Constitution and falsely imprisoned him in violation of Illinois state law. *Id.* The Defendants now move for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) on the grounds that all of Brown's claims are time-barred. *See* R. 14, Mot. J. Pleadings.

¹This Court has subject matter jurisdiction over the Section 1983 claims under 28 U.S.C. § 1331 and supplemental jurisdiction over the state-law claim under 28 U.S.C. § 1367.

²Citations to the docket are indicated by "R." followed by the docket entry.

I. Background

For purposes of this motion, the Court accepts as true the factual allegations in Brown's First Amended Complaint. *Hayes v. City of Chi.*, 670 F.3d 810, 813 (7th Cir. 2012). On July 19, 2013, Brown was sentenced to 300 days' imprisonment after he violated parole. First Am. Compl. ¶ 13. With 221 days of good-time credit as of that date, Brown had about 79 days of his sentence left to serve. *Id.* After accounting for his good-time credit, the sentencing judge set Brown's release date for September 12, 2013. *Id.* ¶ 14; *see also* R. 8-1, 07/19/13 Sentencing Hr'g Tr. at 8:19-20. Despite this, Cook County Jail employees told Brown in August 2013 that he would not be released until March 4, 2014. First Am. Compl. ¶ 3. (They had failed to record Brown's release date as September 12, 2013. *Id.*) In response to this news, Brown filed a Petition for Writ of Habeas Corpus in state court on September 10, 2013. *Id.* The hearing on his petition was initially set for October 10, 2013, but had to be rescheduled three times because Cook County Jail employees allegedly refused to take Brown to court.³ *Id.* ¶¶ 16-19. Finally, on December 16, 2013, more than three months past his original release date, Brown appeared before the sentencing judge to present his petition. *Id.* ¶¶ 21-22.

At the hearing, the sentencing judge recalled that at the July 19, 2013 hearing, everyone—Brown, the prosecutor, and the judge—agreed that Brown would be released around September 12, 2013. First Am. Compl. ¶ 22; R. 8-3, 12/16/13 Petition for Writ of Habeas Corpus Tr. at 4:22-5:2. After observing that

³The state court also rescheduled Brown's hearing one time: on November 4, 2013, Cook County Jail staff took Brown to court to present his petition, but the court continued the hearing to December 16, 2013. *Id.* ¶ 20. 2

“right now [Brown] is in jail three months longer than I thought he would be,” the sentencing judge released Brown on a \$50,000 “I-bond” and scheduled a re-sentencing hearing for January 17, 2014. 12/16/13 Petition for Writ of Habeas Corpus Tr. at 6:11-15; *see also* First Am. Compl. ¶ 23. On January 17, the sentencing judge reaffirmed that Brown should have been released on September 12, 2013 and ordered his bond discharged. First Am. Compl. ¶ 24.

Based on these allegations, Brown asserts five counts against the Defendants. *See* First Am. Compl. In Counts One and Two, Brown brings a Section 1983 claim against Dart and Cook County respectively, alleging that the Defendants violated the Fourth and Eighth Amendments when they failed to account for his good-time credit. *Id.* ¶¶ 30-43. Count Three is an Illinois state-law false imprisonment claim against the Defendants. *Id.* ¶¶ 44-47. And in Counts Four and Five, Brown brings a Section 1983 claim against Dart and Cook County respectively, alleging that the conditions of confinement at Cook County Jail violated the Eighth Amendment’s ban against cruel and unusual punishment.⁴ *Id.* ¶¶ 48-59. The Defendants move for judgment on the pleadings as to all of Brown’s claims, asserting that the claims were brought too late under the applicable statutes of limitations.

⁴In addition to his over-incarceration allegations, Brown also alleges that the Defendants “disregard[ed] the health and safety of inmates” by failing to tend to mold and mildew outbreaks, cockroach and rat infestations, and water leaks at Cook County Jail. First Am. Compl. ¶¶ 25-28.

II. Standard of Review

A party may move for judgment on the pleadings after the pleadings are closed. Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is subject to the same standard as a motion to dismiss under Rule 12(b)(6). *Hayes*, 670 F.3d at 813. In ruling on a motion for judgment on the pleadings, the Court must accept all well-pled allegations as true and view the alleged facts in the light most favorable to the non-moving party. *Id.* Judgment on the pleadings is proper if it appears beyond doubt that the non-moving party cannot prove any set of facts sufficient to support his claim for relief. *Id.* In ruling on a motion for judgment on the pleadings, the Court considers the pleadings alone, which consist of the complaint, the answer, and any documents attached as exhibits. *N. Ind. Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 452 (7th Cir. 1998).

III. Analysis

The Defendants' motion boils down to one issue: when did Brown's Section 1983 claims and his Illinois false-imprisonment claim accrue? Brown's Section 1983 claims are subject to a two-year statute of limitations, *see Williams v. Lampe*, 399 F.3d 867, 870 (7th Cir. 2005) ("A two-year statute of limitations generally applies to personal injury actions in Illinois, 735 ILCS 5/13–202; thus, § 1983 claims in Illinois are also governed by a two-year limitations period[.]" (citation omitted)), and his state-law false imprisonment claim is subject to a one-year statute of limitations, *see* 745 ILCS 10/8-101 ("No civil action ... may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one

year from the date that the injury was received or the cause of action accrued.”); *see also Long v. Williams*, 155 F. Supp. 2d 938, 943-44 (N.D. Ill. 2001) (applying one-year statute of limitations to common-law false imprisonment claim). The Defendants maintain that all of Brown’s claims accrued—so the statute of limitations began to run—on September 12, 2013, as soon as Brown was held past his release date. R. 15, Defs.’ Br. at 3-5. Alternatively, they assert that his claims accrued on December 16, 2013, when the sentencing judge released Brown on a bond. *Id.* Because Brown did not file the complaint until December 30, 2015, the Defendants argue that even if Brown’s claims did not accrue until December 16, 2013, all of his claims are nonetheless time-barred. *Id.* Brown disagrees. He contends that his claims accrued on January 17, 2014, when the state court judge finally resentenced him and ordered his bond discharged. R. 23, Pl.’s Resp. Br. at 3-5. The Court addresses the date of accrual for Brown’s Section 1983 claims and his state-law claim in turn.⁵

A. Brown’s Section 1983 Claims

Although Illinois state law is borrowed and sets the limitations period for the Section 1983 claims, federal law governs the date of accrual. *Kelly v. City of Chi.*, 4 F.3d 509, 511 (7th Cir. 1993). “Accrual is the date on which the statute of limitations begins to run.” *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450 (7th Cir. 1990). Typically, a cause of action accrues when “the wrong that injures the plaintiff occurs.” *Id.* In instances where the plaintiff does not discover his injuries

⁵A statute of limitations defense may be raised in a Rule 12(c) motion so long as “the relevant dates are set forth unambiguously in the complaint,” *Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009), which is the case here. 5

until *after* the alleged wrong occurs, however, the “discovery rule” kicks in to “postpone[] the beginning of the limitations period from the date when the plaintiff is wronged to the date when he discovers he has been injured” *Id.* Applying the discovery rule in the civil-rights context means that a Section 1983 claim accrues “when the plaintiff knows or should know that his or her constitutional rights have been violated.” *Hileman v. Maze*, 367 F.3d 694, 696 (7th Cir. 2004) (quoting *Kelly*, 4 F.3d at 511).

Here, Brown asserts that he was over-incarcerated in violation of his Fourth, Eighth, and Fourteenth Amendment rights. First Am. Compl. ¶¶ 2-3, 29, 31, 40, 54. Based on the allegations in the complaint, Brown knew he had suffered those constitutional injuries as soon as he was held past his September 12, 2013 release date. *Id.* ¶ 3. In fact, sometime in August 2013, Cook County Jail gave Brown a heads-up that his release date would be March 4, 2014, not September 12, 2013. *Id.* This unwelcome surprise prompted Brown to file a habeas petition on September 10, 2013 to correct the error. *Id.* So, as of September 12, 2013, Brown had everything he needed—namely, notice that his constitutional rights had been violated when Cook County Jail refused to release him that day—to bring this civil-rights action. *See Hileman*, 367 F.3d at 696 (“[T]he date on which the plaintiff could have sued for [her] injury ... should coincide with the date the plaintiff ‘knows or should know’ that her rights were violated.” (quoting *Kelly*, 4 F.3d at 511)). Because

Brown did not file his complaint until December 30, 2015, his Section 1983 false imprisonment claims are time-barred.⁶

To push out the accrual date, Brown asserts that his false imprisonment ended on January 17, 2014, when the sentencing judge discharged the \$50,000 I-bond.⁷ See Pl.'s Resp. Br. at 3-5. The idea here is that being on bail is something akin to imprisonment, so the accrual of the claim would not begin until Brown was discharged from bail and completely free of the criminal justice system. *Id.* But being placed on bond alone does not amount to false imprisonment. See *Albright v. Oliver*, 975 F.2d 343, 346 (7th Cir. 1992) (concluding that releasing an arrestee on bond but confining him to the state of Illinois “would not be a sufficient deprivation of liberty to actuate constitutional remedies” where arrestee could leave the state by obtaining leave of court), *aff'd on other grounds*, 510 U.S. 266 (1994); *Williams v. City of Chi.*, 2014 WL 3787422, at *3 (N.D. Ill. July 30, 2014) (holding that the statute of limitations for a false imprisonment claim began to run on the date the plaintiff was placed on an I-bond and released from custody).⁸ So, at the very latest,

⁶Brown also asserts that he was subject to inhumane prison conditions in violation of the Eighth and Fourteenth Amendments. First Am. Compl. ¶¶ 25-27, 29, 48-59. But even assuming that the alleged conditions lasted through the very last day of Brown's imprisonment, the latest that the prison-conditions claims accrued was December 16, 2013, which is the day that he was released on bond. So those claims are also time-barred under the two-year statute of limitations.

⁷A \$50,000 I-bond is a personal recognizance bond—the individual who signs the bond pays nothing, but the Sheriff can collect the full bail amount if the individual fails to appear in court while out on release. See *People v. Stewart*, 406 N.E.2d 53, 55 & n.1 (Ill. App. Ct. 1980).

⁸In *Hernandez v. Sheahan*, the plaintiff asserted that his false imprisonment claim accrued when he was released from electronic monitoring custody, not the date he was released on bond. 1993 WL 257486, at *6 (N.D. Ill. July 8, 1993). The district court agreed, reasoning that “[the plaintiff's] freedom of movement or liberty was restrained from March 3, 1992 to March 19, 1992 by his having to wear at all times an electronic monitoring device

Brown's claims accrued when the sentencing judge released Brown on bond on December 16, 2013, *see Williams*, 2014 WL 3787422, at *3, not later in January 2014 when his bond was discharged.

Next, Brown invokes the holding of *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), as another reason why the false-imprisonment claim did not accrue until he was discharged from bond in January 2014. In recognition of the fact that 28 U.S.C. § 2254 is the exclusive means to challenge a state conviction or state sentence, *Heck* holds that a plaintiff cannot bring a Section 1983 claim if victory on that claim would necessarily imply the invalidity of the conviction or sentence. 512 U.S. at 487 (“[W]hen 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.”). A corollary of that holding is that a claim could accrue *after* a court sets aside the conviction or sentence. Put another way, the *Heck* rule for deferred accrual “delays what would otherwise be the accrual date of a tort action until the setting aside of an extant conviction [or sentence] which success in that tort action would impugn.” *Wallace*, 549 U.S. at 393; *see also Heck*, 512 U.S. at 487. Here, Brown argues that *Heck* deferred the accrual of his false imprisonment claim until the date he was discharged from bond: “Any ruling by a civil court prior to January 17, 2014 would necessarily implicate the validity of [Brown’s] continued

that prohibited him from leaving his home.” *Id. Hernandez* is inapplicable here, however, because there is no suggestion that Brown was subject to any similar conditions of release while he was out on bond.

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incarceration. ... In this case, the alleged deprivation of liberty was [not] valid until the criminal court ruled on January 17, 2014 and released the bond and re-sentenced Brown to time served.” Pl.’s Resp. Br. at 3-4.

The problem with Brown’s deferred-accrual argument is that the bar in *Heck* would *not* have barred him from bringing his false imprisonment claim the moment he stayed too long in jail, that is, the day after September 12, 2013. Victory on the false-imprisonment claim in federal court would not have implied the invalidity of the state-court sentence; to the contrary, Brown was trying to *enforce* the proper sentence, not invalidate it. The entire point of Brown’s false-imprisonment claim is that Jail officials *misapplied* the sentence. Because a judgment in Brown’s favor on his constitutional claims would not have implied the invalidity of his conviction or sentence, the deferred accrual in *Heck* does not apply. *See Heck*, 512 U.S. at 487; *cf. Reynolds v. Jamison*, 488 F.3d 756, 767 (7th Cir. 2007) (recognizing that “a claim for false arrest, because it does not by its nature call into question the validity of a conviction, may go forward immediately, without nullification of the underlying criminal conviction”).

Brown has two more arguments on timeliness.⁹ First, he asserts that the continuing violations doctrine postpones the date of accrual for all of his claims until January 17, 2014. Pl.’s Resp. Br. at 5. The continuing violations doctrine postpones the start of the limitations period where the defendant inflicts continuing and accumulating harm, and then allows the plaintiff to recover for all harm caused

⁹The Court thanks Brown’s recruited *pro bono* counsel for his extensive efforts in representing his indigent client; although ultimately not successful, counsel is commended for creatively presenting arguments on his client’s behalf.

by the continuing violation, even harm that occurred outside what would otherwise be the limitations period. *See Heard v. Sheahan*, 253 F.3d 316, 319 (7th Cir. 2001). But here, even if the continuing violations doctrine applied, the doctrine would at best postpone the accrual to December 16, 2013, the date that Brown was released from the Jail. As explained earlier, the discharge from bond is not the relevant date for starting the limitations clock, because being on bail without restrictions is not the equivalent of imprisonment.

Brown's final argument is that equitable tolling applies to save his claims. Pl.'s Resp. Br. at 5-6. That doctrine applies "if despite all due diligence [the plaintiff] is unable to obtain vital information bearing on the existence of his claim." *Cada*, 920 F.2d at 451. But, as already discussed above, Brown had all the information he needed to bring his claims as of September 12, 2013. *See supra* Section III.A. at 6. Equitable tolling simply does not apply.

B. Brown's State-Law False Imprisonment Claim

Brown concedes that his state-law claim for false imprisonment is time-barred under Illinois' one-year statute of limitations, *see* Pl.'s Resp. Br. at 1 n.1 ("Defendants are correct in their argument applying a one-year statute of limitations to Count III and Plaintiff makes no argument that the Complaint was filed within one year of the alleged acts and omissions."), so this claim is also dismissed. It is worth pointing out, however, that the latest possible date on which Brown's common-law false imprisonment claim accrued is December 16, 2013—when Brown was released on bond. *See Harrell v. Sheahan*, 937 F. Supp. 754, 758

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(N.D. Ill. 1996) (concluding that the plaintiff's state-law claim for false imprisonment could have accrued on the date that the plaintiff was released from prison). And it could be that the limitations period began to run on that claim as early as September 12, 2013. *See Kitchen v. Burge*, 781 F. Supp. 2d 721, 738 (N.D. Ill. 2011) (plaintiff's state-law false imprisonment claim accrued as soon as "[he] knew that he had been falsely imprisoned"—that is, "when he was first imprisoned"); *Pierce v. Pawelski*, 2000 WL 1847778, at *2 (N.D. Ill. Dec. 14, 2000) (under Illinois law, "Pierce knew, or reasonably should have known, of the facts underlying his false arrest and false imprisonment claims at the time he was arrested. Because he did not file his complaint until May 28, 1998, the court finds that the claims are time-barred."). In any event, whether September 12 or December 16 is the accrual date, Brown failed to file his action within the one-year limit under Illinois law, so his state-law claim is also dismissed.

IV. Conclusion

For the reasons discussed, the Defendants' motion for judgment on the pleadings, R. 14, is granted. Brown has already amended the complaint, and his

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response brief does not suggest need to allow a further amendment, so the dismissal is with prejudice. A separate AO-450 judgment shall be entered, and the status hearing of December 14, 2016 is vacated.

ENTERED:

s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

DATE: November 28, 2016