

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WISCONSIN

Dewhite D. Johnson v. Matthew Burns

Case No. 25-C-1401 · No. 25-C-1401 · Decided January 26, 2026

SUMMARY

The United States District Court for the Eastern District of Wisconsin granted Defendant Matthew Burns’s motion to dismiss a 42 U.S.C. § 1983 failure-to-protect claim. The court held that the claim, arising from a March 11, 2022 incident and filed on September 12, 2025, was barred by Wisconsin’s three-year statute of limitations and that incarceration did not toll the limitations period.

CASE DETAILS

COURT	United States District Court for the Eastern District of Wisconsin
WRITING FOR THE COURT	William C. Griesbach
JURISDICTION	United States District Court for the Eastern District of Wisconsin
DECIDED	January 26, 2026
DOCKET	25-C-1401
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved to dismiss a pro se 42 U.S.C. § 1983 failure-to-protect claim as barred by Wisconsin's statute of limitations.
STANDARD OF REVIEW	The court evaluated the sufficiency of the limitations defense on Defendant's motion to dismiss and determined from the dates alleged in the amended complaint that the action was time-barred.
PRECEDENTIAL VALUE	unpublished district court decision
PARTIES	Dewhite D. Johnson v. Matthew Burns

TOPICS

- statute of limitations
- motions to dismiss
- section 1983
- prisoners rights
- civil procedure

PRACTICE AREAS

- civil rights
- prisoner litigation
- statute of limitations
- civil procedure

QUESTIONS PRESENTED

1. Whether Johnson's § 1983 failure-to-protect claim was barred by Wisconsin's three-year statute of limitations.
2. Whether Wisconsin law tolls the statute of limitations during a prisoner's incarceration.

HOLDINGS

1. Johnson's § 1983 claim was barred because it accrued on March 11, 2022, and he did not file suit until September 12, 2025, more than three years later.
2. Wisconsin law does not toll the statute of limitations during a prisoner's incarceration.

KEY QUOTATIONS

“In Wisconsin, there is no tolling of the statute of limitations period during a prisoner’s incarceration.”

“Because Plaintiff did not file this lawsuit until September 12, 2025, it is time-barred under Wisconsin’s three-year statute of limitations.”

FACTUAL BACKGROUND

Johnson alleged that the incident underlying his § 1983 failure-to-protect claim occurred on March 11, 2022. He filed the lawsuit on September 12, 2025, more than three years after the alleged incident. Johnson argued that Wisconsin law tolled the limitations period during his incarceration.

PROCEDURAL HISTORY

The court screened Plaintiff's amended complaint on November 4, 2025, and allowed him to proceed against Lieutenant Matthew Burns on a failure-to-protect claim. Defendant moved to dismiss on December 22, 2025, asserting that the claim accrued more than three years before the action was filed. The court granted the motion, dismissed the case, and directed the Clerk to enter judgment.

DISPOSITION

dismissed

CASES CITED

- Huber v. Anderson, 909 F.3d 201, 207 (7th Cir. 2018)
- Wallace v. Kato, 549 U.S. 384, 387 (2007)
- D'Acquisto v. Love, No. 20-C-1034, 2020 WL 5982895, at *1 (E.D. Wis. Oct. 8, 2020)
- Maddox v. Berge, 473 F. Supp. 2d 888, 894 (W.D. Wis. 2007)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN DEWHITE D. JOHNSON, Plaintiff, v. Case No. 25-C-1401 MATTHEW BURNS, Defendant. DECISION AND

ORDER GRANTING MOTION TO DISMISS Plaintiff Dewhite D. Johnson is representing himself in this 42 U.S.C. § 1983 action.

On November 4, 2025, the court screened the amended complaint and allowed Plaintiff to proceed on a failure to protect claim against Defendant Lt. Matthew Burns. On December 22, 2025, Defendant filed a motion to dismiss, arguing that Plaintiff's claim against him is barred by the relevant statute of limitations.

For the reasons explained below, the court will grant Defendant's motion to dismiss and the case will be dismissed. Defendant argues that Plaintiff's claim is barred by the statute of limitations because the claims accrued more than three years before Plaintiff filed his complaint. Dkt. No. 12 at 1. A § 1983 lawsuit must be brought within the statute of limitations for personal injuries supplied by the state in which the claim arose.

Huber v. Anderson, 909 F.3d 201, 207 (7th Cir. 2018) (citing Wallace v. Kato, 549 U.S. 384, 387 (2007)). In Wisconsin, the statute of limitations for an incident that occurred after April 5, 2018, is three years. See Wis. Stat. § 893.53; D'Acquisto v. Love, No. 20-C-1034, 2020 WL 5982895, at *1 (E.D. Wis. Oct. 8, 2020) (explaining that the Wisconsin legislature changed the relevant statute of limitations from six years to three years).

According to the amended complaint, the incident giving rise to this lawsuit occurred on March 11, 2022. Plaintiff did not file this lawsuit until September 12, 2025, more than three years after the claim accrued. Plaintiff asserts that the statute of limitations is tolled during an individual's period of imprisonment. He cites Wis. Stat. § 893.16 for the proposition that an action may be commenced within two years after a person's incarceration.

But that is not what the statute says. The statute provides: If a person entitled to bring an action is, at the time the cause of action accrues, either under the age of 18 years, except for actions against health care providers; or mentally ill, the action may be commenced within 2 years after the disability ceases, except that where the disability is due to mental illness, the period of limitation prescribed in this chapter may not be extended for more than 5 years.

Wis. Stat. § 893.16. In Wisconsin, there is no tolling of the statute of limitations period during a prisoner's incarceration. See Maddox v. Berge, 473 F. Supp. 2d 888, 894 (W.D. Wis. 2007). Because Plaintiff did not file this lawsuit until September 12, 2025, it is time-barred under Wisconsin's three-year statute of limitations. IT IS THEREFORE ORDERED that Defendant's motion to dismiss (Dkt.

No. 11) is GRANTED. This case is dismissed. The Clerk is directed to enter judgment accordingly. Dated at Green Bay, Wisconsin this 26th day of January, 2026. (/ it WI ☐ Trane, William C. Griesbach United States District Judge This order and the judgment to follow are final.

Plaintiff may appeal this court's decision to the Court of Appeals for the Seventh Circuit by filing in this court a notice of appeal within 30 days of the entry of judgment.

See Fed. R. App. P. 3, 4. This court may extend this deadline if a party timely requests an extension and shows good cause or excusable neglect for not being able to meet the 30-day deadline. See Fed. R. App. P. 4(a)(5)(A). If Plaintiff appeals, he will be liable for the \$605.00 appellate filing fee regardless of the appeal's outcome. If Plaintiff seeks leave to proceed in forma pauperis on appeal, he must file a motion for leave to proceed in forma pauperis with this court.

See Fed. R. App. P. 24(a)(1). Plaintiff may be assessed another "strike" by the Court of Appeals if his appeal is found to be non-meritorious. See 28 U.S.C. § 1915(g). If Plaintiff accumulates three strikes, he will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serious physical injury.

Id. Under certain circumstances, a party may ask this court to alter or amend its judgment under Federal Rule of Civil Procedure 59(e) or ask for relief from judgment under Federal Rule of Civil Procedure 60(b). Any motion under Federal Rule of Civil Procedure 59(e) must be filed within 28 days of the entry of judgment. Any motion under Federal Rule of Civil Procedure 60(b) must be filed within a reasonable time, generally no more than one year after the entry of judgment.

The court cannot extend these deadlines. See Fed. R. Civ. P. 6(b)(2). A party is expected to closely review all applicable rules and determine what, if any, further action is appropriate in a case.