

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted May 1, 2025*

Decided May 2, 2025

BeforeFRANK H. EASTERBROOK, *Circuit Judge*MICHAEL B. BRENNAN, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 24-2836

BRADLEY ANDREW HERBST,
*Plaintiff-Appellant,**v.*CITY OF CHICAGO and CHICAGO
JOHN DINEEN LODGE #7,
*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 24 C 1679

Matthew F. Kennelly,
*Judge.***ORDER**

Bradley Herbst appeals the judgment dismissing his civil-rights lawsuit against his former employer, the City of Chicago, and former union, Chicago John Dineen Lodge #7. *See* 42 U.S.C. § 1983. The district court dismissed Herbst's claims as barred by the statute of limitations. We affirm.

* We have agreed to decide this case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

We accept the factual allegations in the complaint as true and draw reasonable inferences in Herbst's favor. *See Esco v. City of Chicago*, 107 F.4th 673, 678 (7th Cir. 2024). Herbst was employed as a probationary police officer for the City of Chicago from May 2017 to November 2018. After a dispute arose over his interactions with a female officer, the City fired him without cause and without following the procedure outlined in its collective bargaining agreement with employees.

In 2019, Herbst sued the City in state court, alleging that he was terminated "without cause, without due process, without the [P]olice [B]oard" in violation of his rights under the collective bargaining agreement. In 2020, the state court dismissed the complaint for, among other things, lack of standing. The state appellate court affirmed.

In November 2021, Herbst asked Chicago John Dineen Lodge #7, the union that represents Chicago police officers, to represent him in proceedings before the Chicago Police Board. On February 16, 2022, the Lodge denied his request, concluding that his status as a probationary officer did not entitle him to review before the Police Board. That decision was upheld by the Illinois Labor Relations Board.

Herbst then returned to the state appellate court and sought to appeal both the Labor Relations Board's determination and the state court's 2020 order (an order that he already had appealed, unsuccessfully). The appellate court dismissed the appeal for lack of jurisdiction in January 2024.

On February 28, 2024, Herbst filed a § 1983 complaint in federal court, alleging due process violations in connection with his discharge from the Chicago Police Department. The district court dismissed his complaint as barred by Illinois's two-year statute of limitations for personal-injury actions. *See* 735 ILCS 5/13-202.[†] With regard to his claim against the City of Chicago, the court concluded that he did not file his complaint within two years of November 15, 2018, the date he was fired. The court also found his claim against the Lodge untimely because he did not file suit within two years of February 16, 2022, when the Lodge declined his request to appeal his discharge.

On appeal, Herbst maintains that his suit was timely because his claims did not accrue until January 2024, when the state appellate court dismissed his appeal

[†] The district court dismissed Herbst's claims as time-barred under Federal Rule of Civil Procedure 12(b)(6). But the statute of limitations is an affirmative defense, *see* FED. R. CIV. P. 8(c)(1), not a pleadings defect, and so that issue should have been adjudicated under Rule 12(c). *Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012).

contesting the circumstances of his discharge. He invokes *Savory v. Cannon*, 947 F.3d 409, 429–30 (7th Cir. 2020) (en banc), in which we held that the favorable-termination requirement of *Heck v. Humphrey*, 512 U.S. 477, 491–503 (1994), was satisfied by the plaintiff’s general pardon by the Governor of Illinois. Herbst equates the circumstances in *Savory* to his own, in that the state of Illinois did not conclude his litigation until the appellate court dismissed his appeal in 2024 for lack of jurisdiction.

But the rule of *Heck* can delay a claim’s accrual only when there is an outstanding criminal judgment and the claim would undermine the judgment’s validity. *Wallace v. Kato*, 549 U.S. 384, 393 (2007) (citing *Heck*, 512 U.S. at 487). Herbst’s claims do not contest the validity of a criminal judgment. The district court properly determined that Herbst’s claims accrued when he knew or should have known that the defendants violated his constitutional rights. *Milchtein v. Milwaukee County*, 42 F.4th 814, 822 (7th Cir. 2022). Herbst’s claim against the City therefore accrued when he was informed of his termination on November 15, 2018. *See Draper v. Martin*, 664 F.3d 1110, 1113 (7th Cir. 2011). And his claims against the Lodge accrued on February 16, 2022, when he learned that the Lodge would not represent him.

The district court also rightly concluded that Herbst’s claims were untimely. Federal courts borrow the statute of limitations from the forum state (here, Illinois) for § 1983 claims, *Wallace*, 549 U.S. at 387, and Illinois law provided Herbst two years to sue. *See* 735 ILCS 5/13-202. As the district court explained, he needed—but failed—to sue the City by November 16, 2020, and the Lodge by February 16, 2024.

We have considered Herbst’s remaining arguments, and none has merit.

AFFIRMED