

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

November 19, 2008

Charles R. Fulbruge III
Clerk

No. 07-30410
Summary Calendar

HARDY ANDERSON

Plaintiff-Appellant

v.

TIM WILKERSON

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:05-CV-932

Before JONES, Chief Judge, and STEWART and OWEN, Circuit Judges.

PER CURIAM:*

Hardy Anderson, Louisiana prisoner # 214350, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint. In the complaint, which was filed on May 23, 2005, Anderson alleged that he was injured on May 3, 2004, when he was attacked by another inmate.

The defendant, Warden Tim Wilkerson, filed an answer and a motion for summary judgment. Based on the magistrate judge's recommendation, the district court concluded that Anderson's complaint was barred by the applicable

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

statute of limitations. The district court granted Warden Wilkerson's motion for summary judgment and dismissed Anderson's complaint with prejudice as untimely.

Anderson argues that his complaint was not untimely. Anderson is correct. The record reveals that Anderson's pursuit of administrative remedies relating to the May 3, 2004, attack concluded on June 27, 2004. The one-year Louisiana prescriptive period was tolled during the pendency of Anderson's administrative complaint. See *Harris v. Hegman*, 198 F.3d 153, 160 (5th Cir. 1999). Therefore, Anderson's § 1983 complaint, filed on May 23, 2005, was not barred by the applicable statute of limitations. See *id.*

The judgment of the district court is hereby vacated, and the matter is remanded for further proceedings.

VACATED AND REMANDED.