UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 97-20315

(Summary Calendar)

DAN HANER,

Plaintiff - Appellant,

versus

SERGEANT KAUP; TOMMY THOMAS, Sheriff; HARRIS COUNTY, TEXAS,

Defendants - Appellees.

Appeal from the United States District Court
For the Southern District of Texas
(H-97-CV-165)

February 3, 1998

Before WIENER, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Dan Haner, Texas prisoner # 704002, appeals from the district court's dismissal of his 42 U.S.C. § 1983 civil rights action as frivolous. The district court did not abuse its discretion in dismissing his complaint on statute of limitations grounds. *See*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Moore v. McDonald, 30 F.3d 616, 620 (5th Cir. 1994).

Haner argues for the first time on appeal that Sergeant Kaup continually brandished a knife in the cell block, constituting a continuing tort and that his cause of action did not accrue until the date of the last action on April 16, 1995. In the alternative, Haner argues that his cause of action did not accrue until his last informal attempt to resolve the problem was rejected. Haner has not shown plain error with respect to his belated new factual allegations. *Robertson v. Plano City of Tex.*, 70 F.3d 21, 23 (5th Cir. 1995). *Gabel v. Lynaugh*, 835 F.2d 124, 125 (5th Cir. 1988).

AFFIRMED.