

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

January 4, 2012

Lyle W. Cayce
Clerk

No. 10-11086
Summary Calendar

WILLIAM N. OLIVER,

Plaintiff - Appellant

v.

THE UNITED STATES; FEDERAL BUREAU OF PRISONS AT FCI, Fort
Worth, Texas,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:10-CV-607

Before BARKSDALE, STEWART, and PRADO, Circuit Judges.

PER CURIAM:*

William N. Oliver, federal prisoner # 44269-004, proceeding *pro se*, challenges dismissal of his Federal Tort Claims Act (FTCA) complaint. The district court determined Oliver filed his FTCA complaint in August 2010, more than six months after the Department of Justice (DOJ) mailed a denial letter, date-stamped 27 May 2009, for Oliver's administrative-tort claim. The district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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court concluded the complaint was, therefore, untimely under the FTCA, 28 U.S.C. § 2401(b) (six-month deadline), and dismissed it under 28 U.S.C. § 1915(e)(2)(B) (district court must dismiss prisoner's *in forma pauperis* complaint if frivolous or fails to state claim).

Review is *de novo*. *E.g.*, *Samford v. Dretke*, 562 F.3d 674, 678 (5th Cir. 2009). Although time-barred claims are properly dismissed under § 1915, *Gonzales v. Wyatt*, 157 F.3d 1016, 1019-20 (5th Cir. 1998), a discrepancy between the 27 May 2009 date stamp on the DOJ letter and events discussed in the letter occurring after that date suggests the date stamp may be incorrect. Consequently, we cannot determine whether the evidence supports the district court's conclusion.

For the foregoing reasons, the judgment is VACATED and this matter is REMANDED to district court to determine the limitations issue, after making appropriate factual findings on when the DOJ letter was mailed to Oliver.