

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-1399
Summary Calendar

Charles S. Sharrock,

Plaintiff-Appellant,

VERSUS

Pampa Texas Police Department,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas
(CA2-91-23)

(March 1, 1993)

Before THORNBERRY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

THORNBERRY, Circuit Judge*:

Prisoner Charles Sharrock challenges the dismissal of his Section 1983 claim by the district court. We affirm.

Facts and Prior Proceedings

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Charles Sharrock was incarcerated in the Pampa City Jail (Pampa, Texas) from April 6, 1982 to May 6, 1982, awaiting extradition to Colorado on charges of first degree sexual assault and second degree burglary. He was subsequently convicted in Colorado and has been incarcerated in Colorado ever since. On February 6, 1991, nine years after his brief confinement in the Pampa Jail, Sharrock filed this civil rights action alleging that Texas officials forced him to confess to the Colorado charges, that the conditions of his confinement in the Pampa Jail violated the Constitution and that the progression of his state-court civil rights action based on the same issues was unsatisfactory. The magistrate judge found the action was time-barred and recommended dismissal pursuant to 28 U.S.C. § 1915(d) as frivolous and for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The district court adopted the magistrate's report and recommendation over Sharrock's objections.¹ Sharrock responded by filing a "Motion for Retroactive Rehearing on objection of Recommendation to dismiss; (on Exemption Clause). Notice of Appeal." Construing this action as an attempt to appeal the district court's decision, this Court declined to exercise appellate jurisdiction, finding that the notice of appeal had been nullified by the motion for reconsideration. **Charles S. Sharrock v. Pampa Texas Police Department**, No. 91-1385 (5th Cir. June 6, 1991) (unpublished opinion). The magistrate then responded to the motion for

¹ The order of dismissal did not specify whether the dismissal was pursuant to § 1915(d) or rule 12 (b)(6).

reconsideration by issuing a supplemental report and recommendation which reiterated that Sharrock's claim was time-barred and that Sharrock had abused the privilege of proceeding **in forma pauperis**. The magistrate recommended that Sharrock be barred from filing in this suit any pleadings, other than a notice of appeal, without prior leave of court. The district court adopted the supplemental report and recommendation, and dismissed the suit. Sharrock objected and then filed this appeal.

Discussion

A. Statute of Limitations

Sharrock filed this action approximately nine years after the alleged constitutional violations occurred in the Pampa City Jail. Federal courts borrow the forum state's general personal injury limitations period for the purposes of Section 1983 actions. **Ali v. Higgs**, 892 F.2d 438, 439 (5th Cir. 1990). In Texas the applicable period is two years. Tex. Civ. Prac. & Rem. Code § 16.003(a) (West 1986). Effective September 1, 1987, incarceration no longer tolls the limitations period, therefore Sharrock's action arose at the time that the alleged injuries occurred in April and May, 1982 and became time-barred on September 1, 1989, two years after the Texas Legislature amended § 16.001(a)(2). **See Ali v. Higgs**, 892 F.2d at 439; **Burrell v. Newsome**, 883 F.2d 416, 419 (5th Cir. 1989). Since an **in forma pauperis** complaint may be dismissed as frivolous if it lacks an arguable basis in law or in fact, we affirm the district court's dismissal of this suit because Sharrock's claims concerning his 1982 confinement in the Pampa City

Jail are time-barred. **See Ancar v. Sara Plasma, Inc.**, 964 F.2d 465, 468 (5th Cir. 1992).

B. The Confession

Although this suit is styled as a civil rights action, Sharrock's claim that his confession was coerced could affect whether he is entitled to immediate or early release. Such a claim must first be pursued through habeas corpus. **Serio v. Members of Louisiana State Board of Pardons**, 821 F.2d 1112, 1119 (5th Cir. 1987). A state prisoner seeking federal habeas relief must file suit "either in the district where he is confined or the district where the sentencing court is located." **Mayfield v. Klevenhagen**, 941 F.2d 346, 348 (5th Cir. 1991). Sharrock was convicted in Colorado and is presently confined in that state. The district court therefore properly refused to consider this suit insofar as it states a habeas claim.² **See Serio**, 821 F.2d at 1119.

C. The State-Court Lawsuit

Although the district court did not address Sharrock's complaint concerning the slow progress of his state-court lawsuit, it is obvious that the district court lacked the general power to compel the state court to rule. **Moye v. Clerk, DeKalb County Superior Court**, 474 F.2d 1275, 1276 (5th Cir. 1973).

Conclusion

² We pause to note that Sharrock has raised his coerced confession claim in a federal habeas petition filed in Colorado district court on December 14, 1990, however, the record is silent as to the resolution of this claim.

For the foregoing reasons, we affirm.