

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2798
Conference Calendar

CHARLES RAY JOHNSON,

Plaintiff-Appellant,

versus

JIM MCCORN and
JACK HEARD,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-2468
- - - - -

August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Charles Ray Johnson filed a pro se, in forma pauperis (IFP) civil rights complaint, 42 U.S.C. § 1983, challenging the constitutionality of his 1978 Texas state court conviction. The district court determined that Johnson was challenging the fact or duration of his confinement and therefore was required to exhaust his state and federal habeas remedies before bringing a

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

§ 1983 complaint. The court also determined, however, that Johnson's civil rights claims were time barred and dismissed the complaint with prejudice.

A complaint filed IFP can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id.

There is no federal statute of limitations for § 1983 actions, and the federal courts borrow the forum state's general personal injury limitations period. Henson-El v. Rogers, 923 F.2d 51, 52 (5th Cir.), cert. denied, 111 S.Ct. 2863 (1991). The forum state of Texas has a statute of limitations of two years. Tex. Civ. Prac. & Rem. Code Ann. § 16.003 (Vernon 1986). Until August 31, 1987, the legal disability of imprisonment tolled the running of the limitations period. Id. at §§ 16.001((a)(2), (b). Effective September 1, 1987, however, the statute was amended to remove imprisonment as a legal disability. Id. at § 16.001 (Vernon 1991). The amendatory act also provided that a period of limitations that was tolled on August 31, 1987, because the individual was imprisoned, began to run on the effective date of the act. See Acts 1987, 70th Leg., ch. 1049, § 65; Burrell v. Newsome, 883 F.2d 416, 418-19 (5th Cir. 1989).

Although the federal courts look to state law to determine the applicable statute of limitations, they look to federal law to determine when the cause of action accrues. Burrell, 883 F.2d

at 418. Under federal law a cause of action accrues at the time the plaintiff "knows or has reason to know of the injury which is the basis of the action." Id. Johnson knew of his injuries at the time of his trial in March 1978. The limitations period, therefore, began to run on September 1, 1987, when his legal disability was removed, and the two-year period expired on September 1, 1989. Henson-El, 923 F.2d at 52. Johnson did not file his complaint until August 17, 1992, and his complaint was filed after the expiration of the statute of limitations.

AFFIRMED.