

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3571
Conference Calendar

GARY R. GOCHNOUR,

Plaintiff-Appellant,

versus

THE BOEING COMPANY, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA 92-CV-1019
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

A tort claim against the United States is barred unless it is presented in writing to the appropriate agency within two years after the claim accrues. Bush v. United States, 823 F.2d 909, 911 (5th Cir. 1986). This period begins when the plaintiff discovers, or, in the exercise of reasonable diligence should have discovered, the fact of the injury and its cause. Id.

In the instant case, Gary R. Gochnour's claims under the Federal Tort Claims Act are barred. Any claims he may have had arose from events that occurred over twenty years ago. Gochnour could have discovered his injury earlier by using reasonable

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

diligence. Even assuming that Gochnour's communication with his United States senator qualified as an administrative claim, that claim was filed years too late.

To the extent Gochnour states a claim under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), it is barred as well. This Court looks to state law to determine the applicable limitations period for a Bivens action. Spina v. Aaron, 821 F.2d 1126, 1128-29 (5th Cir. 1987).

The applicable Louisiana prescription period is one year. La. Civ. Code Ann. art. 3492 (West 1992). Gochnour claims that this prescription period has been tolled under contra non valentum. Under Louisiana law, contra non valentum prevents the running of prescription where the cause of action is not known or reasonably knowable by the plaintiff. Richardson v. Pennzoil Producing Co., 896 F.2d 919, 922 (5th Cir. 1990). However, a plaintiff will be deemed to know that which he could have learned by reasonable diligence. Matthews v. Sun Exploration & Production, 521 So.2d 1192, 1197 (La. App. 2 Cir. 1988).

As stated earlier, Gochnour could have discovered his claims earlier by using reasonable diligence. His failure to do so has prescribed his claims both under federal and state limitations law. The district court's order dismissing Gochnour's claims is AFFIRMED.