

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5095
Conference Calendar

STEVEN GILBERT,

Plaintiff-Appellant,

versus

JAMES A. COLLINS,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 92-CV-41
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Federal courts borrow the forum state's general or residual personal injury limitations period and tolling provisions for suits brought under 42 U.S.C. § 1983. Rodriguez v. Holmes, 963 F.2d 799, 803 (5th Cir. 1992). In Texas, the applicable period is two years. Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a) (West 1986). Although state law controls the limitations period for § 1983 claims, federal law determines when a cause of action accrues. Brummett v. Camble, 946 F.2d 1178, 1184 (5th Cir.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1991), cert. denied, 112 S.Ct. 2323 (1992). The federal standard provides that the statute of limitations begins to run from the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured. Rodriguez, 963 F.2d at 803.

Although the filing of suit and the diligent issuance of service of citation toll the running of the relevant statute of limitations, dismissal for want of prosecution will have the same effect as if the suit had never been filed. Shaw v. Corcoran, 570 S.W.2d 96, 98 (Tex. Ct. App. 1978). Gilbert's injury occurred on August 3, 1988. His first complaint, filed that same year, was later dismissed for failure to prosecute. Such dismissal did not toll the applicable statute of limitations. Gilbert filed this instant suit on March 20, 1992, one and one-half years beyond the limitations period. Therefore, this suit is barred. The district court's order granting the defendant's motion for summary judgment is AFFIRMED.