

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8297
Conference Calendar

WILLIAM J. MANN,

Plaintiff-Appellant,

versus

PHILLIP ZEIGLER, Individually
and District Attorney for the
County of Coryell, TX, Et Al.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. W-91-CV-219

- - - - -
January 22, 1993)

Before GARWOOD, SMITH, and EMILIO GARZA, Circuit Judges.

PER CURIAM:*

The denial of Fed. R. Civ. P. 11 sanctions is subject to review only for abuse of discretion. Hoque v. Royse City, 939 F.2d 1249, 1256 (5th Cir. 1991). "The decision whether to impose sanctions . . . will turn on an assessment of the gravity of the conduct at issue." Thomas v. Capital Sec. Serv., Inc., 836 F.2d 866, 872 (5th Cir. 1988) (en banc).

William J. Mann cannot show an abuse of discretion.

Although Defendant Zeigler missed the date of Mann's conviction

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

and sentence by exactly three years, the miscalculation had no have overall significance in the motion to dismiss Mann's action as barred by the statute of limitations. It was probably only a clerical error. Dismissal is not affected by the three-year error.

Because no specified federal statute of limitations exists for 42 U.S.C § 1983 suits, federal courts borrow the forum state's general or residual personal injury limitations period. Rodriguez v. Holmes, 963 F.2d 799, 803 (5th Cir. 1992). In Texas, the applicable period is two years. Tex. Civ. Prac. & Rem. Code § 16.003(a). Further, federal courts considering the timeliness of inmates' § 1983 actions apply the states' tolling provisions to statutory limitations periods. Effective September 1, 1987, Tex. Civ. Prac. & Rem. Code § 16.001 was amended to eliminate imprisonment as a legal disability which tolled the running of the two-year statute of limitation. Therefore, for prisoners, limitations then tolled commenced running on September 1, 1987.

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.), cert. denied, ___ U.S. ___, 112 S.Ct. 2323, 119 L.Ed.2d 241 (1992). A state statute of limitations imposed in a § 1983 action does not run until the plaintiff is in possession of the "critical facts" that he has been hurt and the defendants involved. Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988). Therefore, at the latest, Mann knew or should have known of his

injury and the people responsible for it by the date of his conviction in 1986. Id. Under the most lenient analysis, Mann's cause of action was barred on September 1, 1989, two years after the effective date of the amendment to Tex. Civ. Prac. & Rem. Code § 16.001. Mann's cause of action has been effectively barred, and his reliance on Texas fraud law to toll the statute of limitations is fruitless.

AFFIRMED.