

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1239
Conference Calendar

LESTER EARL PAYTON,

Plaintiff-Appellant,

versus

EDWIN M. SIGEL,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CV-2439-T
- - - - -

June 23, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Lester Earl Payton (Payton) appeals the dismissal of his complaint under 42 U.S.C. § 1983 against his former attorney. This Court found in 1989 that Payton had exhausted his habeas remedies sufficiently to seek relief under 42 U.S.C. § 1983. Payton v. Siegel, No. 89-1311 (5th Cir. Sept. 12, 1989) (unpublished).

Federal courts apply state personal-injury limitations periods to actions under 42 U.S.C. § 1983. Owens v. Okure, 488 U.S. 235, 251, 109 S.Ct. 573, 102 L.Ed.2d. 594 (1989). The

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

applicable Texas limitations period is two years. Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). "Under federal law, a cause of action accrues the moment the plaintiff knows or has reason to know of the injury," Helton v. Clements, 832 F.2d 332, 334 (5th Cir. 1987), or when "the plaintiff is in possession of the `critical facts' that he has been hurt and the defendant is involved." Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988)(quoting Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980)). Payton's claim therefore accrued sometime in 1982.

Effective September 1, 1987, Texas removed imprisonment from the list of disabilities that tolled a limitations period. Henson-El v. Rogers, 923 F.2d 51, 52 (5th Cir.), cert. denied, 111 S.Ct. 2863 (1991). The § 1983 limitations period in Texas is tolled, however, while a habeas petitioner exhausts state-law remedies. Rodriquez v. Holmes, 963 F.2d 799, 803 (5th Cir. 1992); Jackson v. Johnson, 950 F.2d 263, 266 (5th Cir. 1992). This Court rejected Payton's habeas corpus appeal on September 12, 1989, see Payton v. Siegel, No. 89-1311, p.1, some three years before Payton prepared his § 1983 complaint. Payton's complaint therefore was time-barred.

Moreover, Payton's complaint is frivolous because it is repetitive of Payton's earlier actions under § 1983 and § 2254. See Wilson v. Lynaugh, 878 F.2d 846, 850 (5th Cir.), cert. denied, 493 U.S. 969 (1989). Finally, we warn Payton that future filings, particularly frivolous appeals and unsubstantiated allegations against the federal judiciary, will make him subject to sanctions.

APPEAL DISMISSED. See 5th Cir. R. 42.2.