

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2329
Conference Calendar

LIONELL G. RODRIGUEZ,

Plaintiff-Appellant,

versus

E. TROTTI ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-93-0335

August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Lionell G. Rodriguez argues that the district court abused its discretion by dismissing his suit as time-barred. He is incorrect.

There is no federal statute of limitations for actions brought pursuant to 42 U.S.C. § 1983; however, federal courts borrow the forum state's general personal injury limitations period. Ali v. Higgs, 892 F.2d 438, 439 (5th Cir. 1990). In Texas, the applicable period is two years. TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (West 1986); Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989).

Rodriguez alleged that the violations of his civil right occurred between 4 November 1990 and 28 January 1991. The district court found that "more than two years have elapsed since 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

dates of the incidents of which the plaintiff complains."^{**} Although Rodriguez argues that he delivered the complaint to prison officials on 28 January 1993, the record demonstrates that the complaint was delivered to prison officials for mailing on Friday, 29 January 1993, and was filed with the clerk on 5 February 1993. Both dates are outside the limitations period; therefore, the district court did not abuse its discretion by dismissing the suit. See, e.g., Houston v. Lack, 487 U.S. 266, 270, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988) (date of delivery of notice of appeal to prison officials for mailing constitutes filing date).

Rodriguez's allegation that he was not aware of the violation of his rights until the defendants testified at the punishment phase of his capital murder trial is contradicted by his pleadings.

AFFIRMED.

^{**} Rodriguez alleged that certain constitutional violations occurred "On or about January 5, 1992." In his brief, he does not challenge the district court's finding that the last date of the alleged constitutional violations was 28 January 1991; therefore, it must be assumed that the "January 5, 1992" statement was a typographical error that was meant to read January 5, 1991.