

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-5574
Summary Calendar

ERICO DAVIAS,
a/k/a Eric Davis

Plaintiff-Appellant,

VERSUS

JOHN C. DURIO and
JOHN P. NAVARRE,

Defendants-Appellees.

Appeals from the United States District Court
for the Western District of Louisiana

(2:93-CV-251)

(May 23, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:*

BACKGROUND

Erico Davias, a/k/a Eric Davis, a New Hampshire state prisoner, filed this 42 U.S.C. § 1983 complaint for monetary damages alleging that during his detention in the custody of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

officials of Allen Parish, Louisiana, he was denied "procedural fairness" which prevented him from appealing his extradition to New Hampshire. Davias alleged that these events occurred on May 21, 1991. Defendants John Claiborne Durio, former Sheriff of Allen Parish, and John P. Navarre, district judge, filed motions to dismiss pursuant to Fed. R. Civ. P. 12(b) on grounds of prescription, attaching certified copies of jail and parish court records. The magistrate judge recommended granting the motions to dismiss on the grounds of prescription and dismissing Davias's complaint with prejudice for failure to file his lawsuit within the prescribed time limit. The district court granted the motions to dismiss on the grounds of prescription and dismissed Davias's complaint with prejudice, as recommended by the magistrate judge.

OPINION

Davias contends that the district court erred in determining that his 42 U.S.C. § 1983 action was barred by the relevant limitations period.

As an initial matter, it must be determined whether the defendants' Fed. R. Civ. P. 12(b) motions to dismiss should have been construed as motions for summary judgment. "The statute of limitations may serve as a proper ground for dismissal under Federal Rule of Civil Procedure 12(b)(6)." Watts v. Graves, 720 F.2d 1416, 1423 (5th Cir. 1983). However, when "matters outside the pleading are presented to and not excluded by the court," a Rule 12(b)(6) motion is to "be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be

given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(b). Because the district court apparently looked at the records attached to the motion to determine whether Davias's complaint was barred by the relevant prescriptive period, the motions to dismiss are more properly considered motions for summary judgment and should be reviewed accordingly.

"Summary judgment is reviewed de novo." Amburgey v. Corhart Refractories Corp., 936 F.2d 805, 809 (5th Cir. 1991). Summary judgment is proper when, viewing the evidence in the light most favorable to the non-movant, "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Id. (quoting Fed. R. Civ. P. 56(c)). If the moving party meets the initial burden of showing that there is no genuine issue, the burden shifts to the non-moving party to produce evidence or set forth specific facts showing the existence of a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); Fed. R. Civ. P. 56(e).

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 Louisiana, La. Civ. Code art. 3492 sets the applicable period at one year. Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988). Federal law determines when a cause of action under § 1983 accrues. Gartrell

v. Gaylor, 981 F.2d 254, 257 (5th Cir. 1993). A state statute of limitations for purposes of a § 1983 action does not begin to run until the plaintiff is in possession of the "critical facts" necessary to determine that he has been injured by the defendant. Freeze, 849 F.2d at 175.

Davias contends that he met the one-year statute of limitations as he presented his claim twice before to this same district court. He has attached to his appellate brief copies of court documents from his earlier filings in the district court.

Davias previously filed a § 1983 action in C.A. No. 92-0844-CC in the U.S. district court for the Western District of Louisiana contending these same facts on May 7, 1992. However, on September 18, 1992, because Davias requested release from incarceration, the court construed the § 1983 action as a petition for federal habeas corpus relief and transferred the case to the U.S. district court in New Hampshire where Davias was then presently incarcerated. Davias subsequently filed a 28 U.S.C. § 2241 action in C.A. No. 92-1837-LC with the same U.S. district court in Louisiana on September 30, 1992, alleging the same facts. The court again transferred the action to the New Hampshire federal district court.

Because the district court's own documents indicate that Davias previously brought a § 1983 action within the one-year time limitation, it would appear that the district court should have deemed the prescriptive period tolled while Davias pursued habeas relief. Burge v. Parish of St. Tammany, 996 F.2d 786, 788-89 (5th

Cir. 1993) (citing Rodriguez v. Holmes, 963 F.2d 799, 804-05 (5th Cir. 1992)).

In general, prisoners who challenge the constitutionality of their convictions or sentences must first exhaust their state and federal habeas remedies before seeking § 1983 relief. Serio v. Members of Louisiana State Bd. of Pardons, 821 F.2d 1112, 1117 (5th Cir. 1987). Accordingly, federal courts should ordinarily decline to address the merits of a potential § 1983 claim that must be exhausted through habeas review. See id.; William v. Dallas County Comm'rs, 689 F.2d 1212, 1214-15 (5th Cir. 1982), cert. denied, 461 U.S. 935 (1983).

It is unclear whether Davias has exhausted his federal habeas remedies before pursuing this instant § 1983 action. His complaint gives information regarding a pending federal case in New Hampshire, which was filed on September 22, 1992. Considering the nearness of the filing date in conjunction with the September 18, 1992, transfer of Davias' previous § 1983/§ 2254 case to the New Hampshire U.S. district court, it is conceivable that this is an appeal of Davias's federal habeas petition.

Because of the murkiness regarding the exhaustion issue, the district court's judgment is vacated and the case remanded for the district court to determine whether Davias's has exhausted his federal habeas remedies. The district court is in the best position to review its previous court orders in the first instance, which Davias has brought to the attention of this Court, to determine whether Davias's present suit was timely filed and

whether Davias has exhausted his federal habeas remedies. If he has exhausted those remedies, the district court should entertain his § 1983 complaint. If he has not exhausted his remedies, the district court should hold the case in abeyance until Davias has achieved exhaustion.

We VACATE the district court's dismissal of Davias's § 1983 complaint on limitations grounds and REMAND to determine whether Davias has exhausted his federal habeas remedies. Fed. R. App. P. 34(a)(3).