IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-8765
Summary Calendar

JORITA HAGINS,

Plaintiff-Appellant,

versus

CATHERINE CRAIG, Warden, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Texas
(W-93-CA-175)

(May 18, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Jorita Hagins, an inmate at the Gatesville Unit of the Texas Department of Criminal Justice, Institutional Division ("TDCJ-ID"), filed the instant civil rights action pro se and in forma pauperis (IFP) against Catherine Craig, Warden of the Mountain View Unit of TDCJ-ID; and Major Greenwood, a disciplinary hearing officer at Mountain View. Hagins's complaint, together with facts elicited

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

during a Spears hearing, alleges that the defendants opened a letter Hagins had sent to a prison civil rights group and a letter she had sent to then-President Reagan. She further alleges that the defendants used the contents of the letters to support a disciplinary action against her, resulting in her loss of privileges, reduction in line status, continued harassment, and ultimate transfer to another, higher security facility (Gatesville).

Following the Spears hearing, the magistrate judge concluded that Hagins's action was time-barred under the applicable statute of limitations. Hagins objected, but the district court overruled her objections, adopted the magistrate judge's report and recommendation, and dismissed the action.

There is no federal statute of limitations for actions brought pursuant to 42 U.S.C. § 1983. Federal courts borrow the forum state's general personal injury limitations period. Ali v. Higgs, 892 F.2d 438, 439 (5th Cir. 1990); Owens v. Okure, 488 U.S. 235, 249-50, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). In Texas, the applicable period is two years. Tex. Civ. Prac. & Rem. Code § 16.003(a) (West 1986); see also Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). Although Texas law governs the limitations period and the tolling exceptions, federal law governs when a cause of action arises. Burrell, 883 F.2d at 418.

Under federal law, a cause of action arises "`when the plaintiff knows or has reason to know of the injury which is the

basis of the action.'" Id. (quoting Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980) (further citations omitted)). The determination of when a cause of action arises is reviewed for clear error. Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988).

The facts from Hagins's complaint and the Spears hearing establish the following: Hagins sent a letter in October of 1989 to Anna Dobbyn, director of a prisoner civil rights organization in San Antonio. In the letter, Hagins wrote that "Everything is a mess here and yes [Warden] Craig is still on the bottle. She was seen here so drunk that she could not walk and had to be taken home." The Warden filed a complaint against Hagins for "knowingly making false statements for the purpose of harming another person." Although Hagins alleged at the Spears hearing that she pleaded not guilty to that charge, the record of the disciplinary hearing, signed by Hagins, establishes that she in fact entered a guilty plea.

Hagins alleges that the defendants violated her civil rights by opening that letter to Dobbyn. Because the disciplinary action resulting from that letter occurred on October 25, 1989, the magistrate judge concluded that Hagins knew or should have known at that time that her letter had been opened. Therefore, her cause of action arose on that date. This conclusion is not clearly erroneous. Freeze, 849 F.2d at 175. As Hagins did not file the instant action until May 13, 1993, the claim regarding the letter

to Dobbyn is time-barred under Texas law. Burrell, 883 F.2d at 418.

The district court also dismissed as time-barred Hagins's claim regarding the unlawful opening of her letter to the President. Hagins testified during the Spears hearing that she did not know that her 1987 letter to the President had been opened until she looked at her personnel file in November of 1992 and discovered a copy of it there. The magistrate judge found that, as a result of the 1989 disciplinary hearing resulting from the Dobbyn letter, Hagins was "unquestionably" put on notice at that time that the defendants were, at a minimum, opening and reading her "special" correspondence in apparent violation of TDCJ-ID rules and the Constitution. As Hagins could have confirmed this at any time by requesting to view her prison personnel record--which was available to her under the Texas Open Records Act, Tex. Rev. Civ. Stat. Ann. Art. 6252-17a (West 1993), repealed by Acts 1993, 73rd Leg., ch. 268, § 46(1)--the district court's conclusion that she "had reason to know" of the injury at that time is not clearly erroneous.

Although Hagins's brief presents little in the way of cognizable arguments, she does contend that the limitations period should have been tolled because she was incarcerated. This argument is unavailing, however, as the provision of Texas law tolling the statute of limitations due to incarceration has been eliminated. Tex. Civ. Prac. & Rem. Code Ann. § 16.001 (West 1992)

(effective September 1, 1987). The district court's judgment dismissing Hagins's complaint under Fed. R. Civ. P. 12(b)(6) is

A F F I R M E D.[1]

[1]Hagins also moves this court for production of the transcripts of her Spears hearing. As the tapes and a transcript have already been made a part of the record on appeal, and in the light of the recommended disposition, this motion is denied.