

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8799
Conference Calendar

BILLY DALE CARTER,

Plaintiff-Appellant,

versus

AUSTIN AMERICAN STATESMAN
NEWSPAPER CO.,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-93-CV-376
- - - - -

(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Billy Dale Carter, a prisoner of the state of Texas, filed a civil rights action, pursuant to 42 U.S.C. § 1983, against the Austin American-Statesman Newspaper Company. He alleged that the newspaper published a report that Carter sexually assaulted another man in the Travis County Jail, but the charges were dismissed as a result of DNA tests. He appeals the judgment of the district court dismissing the action as time-barred.

"[W]here it is clear from the face of a complaint filed in forma pauperis that the claims asserted are barred by 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 statute of limitations, those claims are properly dismissed pursuant to § 1915(d)." Gartrell v. Gaylor, 981 F.2d 254, 256 (5th Cir. 1993). "Under federal law, a cause of action accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action." Id. at 257. Because there is no federal statute of limitations for civil rights actions, the federal court gives effect to the forum state's tolling provisions. Id. In this case, the Texas general personal-injury limitations period of two years applies. Id. at 256. To the extent that Carter's complaint raised a state-law libel claim, "[a] suit for libel or slander must be brought no later than one year after the day the cause of action accrued." Martinez v. Hardy, 864 S.W.2d 767, 774 (Tex. Ct. App. 1993).

Carter filed his complaint on September 13, 1993, alleging that the newspaper violated his civil rights on or about November 16 or 17, 1990. Although the charges of sexual assault were not dismissed until July 8, 1992, the cause of action accrued when the article was published in November 1990 because Carter had reason to know that he was innocent of the charges reported in the newspaper. Carter suggests no tolling provision that might apply, and none is apparent. See Henson-El v. Rogers, 923 F.2d 51, 52 (5th Cir.), cert. denied, 111 S.Ct. 2863 (1991) (Texas removed imprisonment from the list of legal disabilities effective September 1, 1987). Therefore, Carter's civil rights action and the potential state-libel claim accrued almost three years prior to filing the complaint and are time-barred.

For these reasons, we AFFIRM the judgment of the district

court dismissing the action with prejudice. See Lavespere v. Niagara Mach. & Tool Works, Inc., 920 F.2d 259, 262 (5th Cir. 1990), cert. denied, 114 S.Ct. 171 (1993) (the Court may affirm the district court for reasons not advanced by that court).

AFFIRMED.