IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 93-9059
Conference Calendar

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CURTIS SHABAZZ,
a/k/a Rollins,

Plaintiff-Appellant,

versus

RICHARD K. FRANKLIN ET AL,,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CV-648-G
- - - - - - - - - - -
(May 19, 1994)

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

PER CURIAM:*

A complaint filed in forma pauperis can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

There is no federal statute of limitations for section 1983 actions, and the federal courts borrow the forum state's general personal injury limitations period. Henson-El v. Rogers, 923 F.2d 51, 52 (5th Cir.), cert. denied, 111 S.Ct. 2863 (1991). The forum state of Texas has a statute of limitations of two years. Tex. Civ. Prac. & Rem. Code Ann. § 16.003 (Vernon 1986).

In his complaint Shabazz alleged that between March 31, 1989, and December 1989, the defendants wrongly conspired to convict him of attempted murder. Shabazz did not file his complaint until April 1, 1993, more than two years after the alleged violations occurred, and therefore his claims are barred by the applicable statute of limitations.

Shabazz now argues that his conspiracy allegations are not barred by the applicable statute of limitations because Judge Hampton's ruling on April 16, 1992, was an act in furtherance of the conspiracy and therefore the last overt act occurred within the two-year period. A cause of action accrues at the time the plaintiff knows or has reason to know of the injury which is the basis of the complaint. Helton v. Clements, 832 F.2d 332, 334-35 (5th Cir. 1987). In the conspiracy context, the cause of action accrues as soon as the plaintiff knew or should have known of the overt acts involved in the alleged conspiracy. See id. at 335. The actionable injury results from the overt acts, not the mere continuation of the conspiracy. Id.

In his complaint Shabazz alleged that the defendants were involved in a conspiracy that began on March 31, 1989, and ended on December 1989. Shabazz knew of the his alleged injury by

December 1989, and therefore the statute of limitations expired in December 1991. Id.; see Turner v. Upton County, Tex., 967 F.2d 181, 185 (5th Cir. 1992). His conclusional allegation that Judge Hampton denied relief in a 1992 post-conviction proceeding is insufficient to support his contention that this ruling perpetuated or resurrected the dormant 1989 conspiracy. The district court properly dismissed the conspiracy allegations as barred by the applicable statute of limitations.

Judges are absolutely immune from damages claims arising out of acts performed in the exercise of their judicial functions. Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993). This immunity extends to all judicial acts, unless the acts were preformed in the clear absence of jurisdiction. Mitchell v. McBryde, 944 F.2d 229, 230 (5th Cir. 1991). Shabazz's allegations against Judge Hampton stem from the judicial acts he performed during the post-conviction proceeding, and therefore Judge Hampton is entitled to absolute immunity.

The district court did not abuse its discretion by dismissing Shabazz's complaint as frivolous. Because the allegations in the complaint are legally barred, the judgment is modified to reflect a dismissal with prejudice.

AFFIRMED as modified.