

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11029
Conference Calendar

JESSE ALVIN PURSCHE,

Plaintiff-Appellant,

versus

IRVING, CITY OF, Mayor -- City Council,
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CV-5-P

- - - - -
(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Jesse Alvin Pursche appeals the dismissal of his civil rights action as frivolous. Pursche contends that his claims are not time-barred. He also seeks to abandon his claim for habeas corpus relief but to pursue his claims of police and prosecutorial misconduct under 42 U.S.C. § 1983.

Federal courts apply state personal-injury limitations periods to actions under 42 U.S.C. § 1983. *Owens v. Okure*, 488 U.S. 235, 251, 109 S. Ct. 573, 102 L. Ed. 2d 594 (1989). 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 Texas limitations period is two years. *Burrell v. Newsome*, 883 F.2d 416, 418 (5th Cir. 1989). Federal law determines when a § 1983 action accrues for the purpose of applying the statute of limitations. *Id.* "Under federal law, a cause of action accrues the moment the plaintiff knows or has reason to know of the injury," *Helton v. Clements*, 832 F.2d 332, 334 (5th Cir. 1987), or when "the plaintiff is in possession of the 'critical facts' that he has been hurt and the defendant is involved." *Freeze v. Griffith*, 849 F.2d 172, 175 (5th Cir. 1988)(quoting *Lavellee v. Listi*, 611 F.2d 1129, 1131 (5th Cir. 1980)). Pursche knew on September 7, 1991, that he had been injured by police and on September 8 that police had given him an allegedly inadequate choice between visiting his parents and visiting the hospital. His claims regarding the events of September 7-8, 1991, therefore accrued on those dates. Pursche filed his complaint on January 3, 1994, more than three months after the expiration of the limitations period.

To the extent that Pursche seeks relief regarding his confession to police and misconduct during his criminal proceedings,

when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Heck v. Humphrey, ___ U.S. ___, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994). If a claim falls under *Heck*, a would-be § 1983

plaintiff has no cause of action until he can show that his conviction has been invalidated. *Id.* at 2373.

A judgment for Pursche on his claims regarding his alleged confession and alleged misconduct by police and prosecutors in connection with Pursche's criminal proceedings would undermine the validity of his conviction. He has no cause of action regarding those claims. *See id.*

APPEAL DISMISSED.