

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50201
Conference Calendar

HOWARD NELSON LAMB,

Plaintiff-Appellant,

versus

BOB BROOKSHIRE, Sheriff of
Ector County, Texas, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-94-CA-032
- - - - -
(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that Howard Nelson Lamb's motion for leave to proceed in forma pauperis (IFP) on appeal is DENIED. Lamb has failed to present a nonfrivolous issue for appeal. See Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986). The appeal is therefore DISMISSED as frivolous. See 5th Cir. R. 42.2.

The district court dismissed Lamb's 42 U.S.C. § 1983 complaint alleging the denial of adequate medical care while he

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

was incarcerated in the Ector County Jail as frivolous on the ground that it was barred by the statute of limitations. A complaint may be dismissed as frivolous under § 1915(d) if it has no arguable basis in law or in fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). This Court reviews such a dismissal for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). "[T]he district court may raise the defense [of limitations] sua sponte in an action proceeding under 28 U.S.C. § 1915." Gartrell v. Gaylor, 981 F.2d 254, 256 (5th Cir. 1993). When it is clear from the face of the complaint that a claim is barred by the applicable statute of limitations, § 1915(d) dismissal is warranted. Id.

Lamb does not contest the district court's determination that he was last incarcerated in the Ector County Jail on October 23, 1986. In Texas, the statute of limitations for personal injury actions and thus for § 1983 actions is two years. Henson-El v. Rogers, 923 F.2d 51, 52 (5th Cir.), cert. denied, 111 S. Ct. 2863 (1991). Accordingly, Lamb had until October 23, 1988, to file his complaint. He did not file the complaint until January 27, 1994, however. Lamb contends that the statute of limitations did not begin to run on his claim until 1993 when he learned that he could bring a § 1983 action for deliberate indifference to his serious medical needs.

This argument is meritless. "[A] cause of action accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action." Gartrell, 981 F.2d at 257.

Here, any injury occurred while Lamb was incarcerated in the Ector County Jail, not when he allegedly learned of his right to file a § 1983 claim based on the denial of adequate medical care. Thus, the district court correctly dismissed the complaint as frivolous.

MOTION DENIED, APPEAL DISMISSED.