

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60085
Conference Calendar

TYRESE J. EARNEST,
versus
MOLLY PEMBERTON ET AL.,

Plaintiff-Appellant,
Defendants-Appellees.

TYRESE J. EARNEST,
versus
MAJOR ROBINCHEAUX, Etc., ET AL.,

Plaintiff-Appellant,
Defendants-Appellees.

TYRESE J. EARNEST,
versus
MOLLY PEMBERTON ET AL.,

Plaintiff-Appellant,
Defendants-Appellees.

TYRESE J. EARNEST,
versus
VERA SIMMONS, Etc., ET AL.,

Plaintiff-Appellant,
Defendants-Appellees.

TYRESE J. EARNEST,
versus
RANDY MCCLENDON, Etc., ET AL.,

Plaintiff-Appellant,
Defendants-Appellees.

TYRESE J. EARNEST,
 versus
 KEN BROADUS, Etc.,

Plaintiff-Appellant,
 Defendant-Appellee.

TYRESE J. EARNEST,
 versus
 MOLLY PEMBERTON ET AL.,

Plaintiff-Appellant,
 Defendants-Appellees.

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 Appeal from the United States District Court
 for the Southern District of Mississippi
 USDC No. 92-CV-122, 164, 165, 225, 227, 239, and
 306 (Cons. in D.C.)
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 (September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Tyrese J. Earnest argues that the district court abused its discretion in dismissing his actions for not complying with the disclosure requirements set forth in the "New Procedure for 1983 Pro Se Prisoner Cases."

Although the district court dismissed Earnest's complaints without prejudice, the dismissal operates as a dismissal with prejudice should Earnest be barred by the applicable limitations period from filing a new complaint. See Berry v. GIGNA/RSI-

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

CIGNA, 975 F.2d 1188, 1191 (5th Cir. 1992). For a state with multiple statutes of limitations for personal injury actions, a federal court considering claims brought under 42 U.S.C. § 1983 should apply that state's residual or general personal injury limitations period. Owens v. Okure, 488 U.S. 235, 249-50, 109 S. Ct. 573, 102 L.Ed. 2d 594 (1989). In James By James v. Sadler, 909 F.2d 834, 836 (5th Cir. 1990), this Court held that "under Owens, the three year residual period provided by Section 15-1-49, Miss. Code Ann. applies." The earliest incident mentioned in any of Earnest's complaints--his back injury--took place on November 8, 1991. Thus, Earnest has until November 8, 1994, to refile his complaints, and the dismissal is properly analyzed as one without prejudice.

A district court may dismiss an action sua sponte under Fed. R. Civ. P. 41(b) for failure to comply with any order of the court. McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988). A reviewing court will reverse the district court only on finding an abuse of discretion. Id.

Because the dismissal was without prejudice and Earnest is not barred from refileing, he has not suffered prejudicial harm. In such circumstances, the district court's dismissal does not constitute an abuse of discretion. See id.

The mandate shall issue forthwith.

AFFIRMED.