

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60294  
Summary Calendar

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PHILLIPS STOKES,

Plaintiff-Appellant,

VERSUS

EDWIN BENOIST, JR., ET AL.,

Defendants,

WILLIAM T. FERRELL, JR., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
(92-CV-56)

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(February 6, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:<sup>1</sup>

Phillips Stokes challenges the dismissal of his civil rights claims. We **AFFIRM** in part and **REVERSE** in part.

I.

On June 15, 1992, Stokes, a prisoner *pro se* litigant proceeding *in forma pauperis*, filed claims pursuant to 42 U.S.C. § 1983 against a state judge and several officials from Adams County,

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<sup>1</sup> Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

Mississippi, alleging that on November 17, 1986, he was severely beaten by sheriff's deputies during a recess of his trial for capital murder. He claims that several county officials failed to prevent this beating and to provide medical care for his injuries, and that, as a result of this beating, he was "dizzy" and incapable of understanding the trial proceedings or testifying on his own behalf. Stokes sought relief in the form of monetary damages and a new trial.<sup>2</sup>

In July 1993, the district court dismissed the complaint against the state judge on grounds of judicial immunity, but directed that the other defendants be served. The district court also notified Stokes that his request for a new trial was in the nature of a claim for habeas relief, and directed him to pursue that relief in a separate action.<sup>3</sup> In April 1994, after referral of the case to a magistrate judge, the balance of Stokes' claims were dismissed as time barred.

## II.

Stokes challenges the dismissals of his claims against the state judge (judicial immunity), and the Adams County defendants

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<sup>2</sup> Stokes was ordered to amend his complaint with respect to certain matters. Although the order directed Stokes to file an *amended* complaint, the substance of the order was for Stokes to *supplement* the original complaint in certain specified areas. The district court considered Stokes' original and amended complaint as one, and we do so here.

<sup>3</sup> It is unclear from the record whether Stokes' sought habeas relief as directed by the district court. In any event, he does not challenge the district court's ruling on this point; therefore, we do not consider his new trial claim as part of this appeal.

(failure to file within the limitations period). We review these challenges *de novo*.<sup>4</sup>

A.

1.

We uphold the dismissal of the claim against the state judge. Stokes claims that the judge violated his civil rights by refusing to hold a hearing related to the alleged beating. As we have noted: "Judicial officers are entitled to absolute immunity from claims for damages arising out of acts performed in the exercise of their judicial functions." ***Boyd v. Biggers***, 31 F.3d 279, 284 (5th Cir. 1994).

2.

The district court dismissed the § 1983 claims against the Adams County officials because Stokes failed to file them within the applicable prescriptive period. The district court applied the one-year statute of limitations applicable to intentional torts, consistent with ***Gates v. Spinks***, 771 F.2d 916 (5th Cir. 1985), *cert. denied*, 475 U.S. 1065 (1986), which held that § 1983 actions filed in Mississippi were subject to the one-year statute. In 1989, however, the Supreme Court held that, when a state has

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<sup>4</sup> Stokes claims that he did not consent to the referral of his case to a magistrate judge pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Stokes' signature on the consent form for referral of the case belies his contention. Moreover, he has not even stated a basis which, if true, would suggest that his consent was anything but voluntary. Stokes appears to base his claim of involuntary consent on his belief that the denial of his motion for a jury trial suggested that the district court "would not entertain his case". Such a mistaken belief, attributable to no one but Stokes himself, cannot vitiate a signed consent to referral of the case to a magistrate judge.

multiple statutes of limitations, its residual statute for personal injury actions should be applied to § 1983 claims. *Owens v. Okure*, 488 U.S. 235 (1989). Mississippi has a six-year prescriptive period for actions arising before July 1, 1989. See Miss. Code. Ann. § 15-1-49 (1994).

The parties dispute whether *Owens* should apply retroactively to provide a six-year period for Stokes' claim, arising in 1986. Our court resolved this dispute in *Thomas v. City of New Albany*, 901 F.2d 476 (5th Cir. 1990), concluding that the six-year period applied. See also *James by James v. Sadler*, 909 F.2d 834, 836 (5th Cir. 1990) (applying *Owens* retroactively). Because Stokes' claim arose before July 1, 1989, his limitation period was six years. Stokes filed within this period; therefore, the district court erred in dismissing the claims against the county officials.

B.

Finally, Stokes claims that his motion for a jury trial was improperly denied. The judge denied his motion on the grounds that Stokes' belated motion would disrupt the court's docket. Because some time has passed since this ruling, we remand for reconsideration in light of the district court's present docket.<sup>5</sup>

III.

For the foregoing reasons, the judgment is

**AFFIRMED** in part, and **REVERSED AND REMANDED** in part.

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<sup>5</sup> Stokes' motion for summary judgment filed with this court is **DENIED**.