

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60325  
Summary Calendar

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ROBERT SAMUEL SCRUGGS,

Plaintiff-Appellant,

versus

JERRY HOWIE, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
(90-CV-107)

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(October 19, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:<sup>1</sup>

Robert Samuel Scruggs appeals the summary judgment dismissing his 42 U.S.C. § 1983 claims against Jerry Howie. We **AFFIRM** in part, **VACATE** in part, and **REMAND**.

I.

Scruggs, claiming that he was subjected to the use of excessive force when arrested by Mississippi Highway Patrol Officer Howie, filed a RICO and civil rights complaint against Howie and

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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 Pursuant to that rule, the court has determined that this opinion should not be published.

other officials.<sup>2</sup> The district court adopted the magistrate judge's recommendation that all claims and all defendants be dismissed, except for the § 1983 claim against Howie.

Howie moved for summary judgment, asserting that Scruggs' claim was time-barred. Over Scruggs' objections, including that he mailed his complaint to the clerk on February 7, 1990, prior to the expiration of the limitations period, the district court adopted the magistrate judge's recommendation that summary judgment be granted for Howie, and dismissed the case with prejudice.

## II.

Scruggs challenges only the summary judgment for Howie and the denial of his motion for appointment of trial counsel. He does not appeal the dismissal of his claims against the other defendants.

### A.

As for the summary judgment, Scruggs contends that a factual dispute exists as to whether he filed his complaint within the limitations period.

We review a summary judgment *de novo*, using the same standard applicable in the district court. *E.g.*, **Matagorda County v. Law**, 19 F.3d 215, 217 (5th Cir. 1994). "Summary judgment is appropriate if the record discloses `that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" **Id.** (quoting Fed. R. Civ. P. 56(c)). "The pleadings, depositions, admissions, and answers to interrogatories,

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<sup>2</sup> Scruggs is currently, and was at the time he filed this action, incarcerated.

together with affidavits, must demonstrate that no genuine issue of material fact remains." **Id.** The summary judgment evidence is considered in the light most favorable to the non-movant; if it could not lead a rational trier of fact to find for the non-movant, there is no genuine issue for trial. **Id.**

It is undisputed that the acts which form the basis of Scruggs' complaint occurred on February 29, 1984, and that this action is governed by Mississippi's six-year statute of limitations. Miss. Code Ann. § 15-1-49 (1972); see **Thomas v. City of New Albany**, 901 F.2d 476, 476 (5th Cir. 1990). "In federal cases, the applicable statute of limitations is not tolled until the plaintiff's complaint is received by the court clerk". **Russell v. Board of Trustees of Firemen, Policemen and Fire Alarm Operators' Pension Fund**, 968 F.2d 489, 493 (5th Cir. 1992), cert. denied, \_\_\_ U.S. \_\_\_, 113 S. Ct. 1266 (1993); (citing **Martin v. Demma**, 831 F.2d 69, 71 (5th Cir. 1987)).

It is unclear when the clerk received Scruggs' complaint. The date stamped on the face of the complaint is May 7, 1990, more than two months after the expiration of the limitations period. Scruggs maintains, however, that he filed his complaint on February 7, 1990 -- approximately three weeks before the limitations period expired. Moreover, Howie's answer agrees, stating that "[t]he Complaint ... was not filed until on or about February 7, 1990." The complaint contains a certificate of service dated "2/10/90" and refers to a "SECOND/FILING". The record also contains an *in forma pauperis* affidavit date-stamped by the clerk of court as filed on February

20, 1990, which contains Scruggs' signature stating that it was executed on February 28, 1990. That affidavit appears to be a copy of an affidavit dated February 4, 1990, which Scruggs submitted earlier, but failed to sign (which necessitated its resubmission). And, the prison official's attestation to Scruggs' impoverished state is dated February 10, 1990.

With his objections to the magistrate judge's recommendation, Scruggs submitted a letter he wrote to the court clerk, dated February 26, 1990, which is date-stamped as filed on March 5, 1990, stating that he is "filing A FEDERAL DISTRICT CIVIL RICO CLAIM For injury's, in the said State Of Mississippi." The letter contains a handwritten notation, apparently by the clerk of court, which states, "[t]o file Complaint, you are *required* to use our forms. I mailed you a supply on 2/21/90." (Emphasis in original.) With his objections, Scruggs also submitted a letter from the deputy clerk to him, dated May 11, 1990, which states that the clerk was returning Scruggs' IFP affidavit because it was unsigned, and requests that Scruggs sign and resubmit the form. The record does not contain IFP affidavits, other than the two executed in February 1990; restated, it does not contain any executed after the May 1990 letter.

The district court did not analyze the conflicting dates. In any event, as stated, our review of a summary judgment is *de novo*. But, on this record, a material fact issue does appear to exist. Because there is a material fact issue on whether Scruggs'

complaint was filed prior to the expiration of the limitations period, we vacate the summary judgment.

B.

A trial court is not obligated to appoint counsel in a § 1983 case "unless the case presents exceptional circumstances." *Ulmer v. Chancellor*, 691 F.2d 209, 212 (5th Cir. 1982). The denial of appointment of counsel is reviewed only for an abuse of discretion. *Id.* at 213. Scruggs has demonstrated that he is capable of representing himself, and the factual and legal issues in the case are not complex. Accordingly, there was no abuse of discretion in the denial of his motion for appointment of trial counsel.

III.

For the foregoing reasons, the denial of appointment of trial counsel and the dismissal of all defendants except Howie are **AFFIRMED**; the summary judgment in favor of Howie is **VACATED**, and the case is **REMANDED** for further proceedings.

**AFFIRMED IN PART; VACATED IN PART; AND REMANDED**