

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60723
Conference Calendar

GEORGE LAWRENCE CHILDS,

Plaintiff-Appellant,

versus

WAYNE SCOTT, Director, Texas
Department of Criminal Justice,
Institutional Division, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-G-94-555
- - - - -

(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

George Lawrence Childs appeals the dismissal under 28 U.S.C. § 1915(d) of his civil rights complaint which alleged lost-property and denial-of-access-to-the-courts claims. The district court held that Childs' complaint was time-barred by the statute of limitations and that Childs had failed to allege any constitutional violations.

Federal courts apply state personal-injury limitations periods to actions brought under 42 U.S.C. § 1983. Owens v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Okure, 488 U.S. 235, 251 (1989). The 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).

On March 20, 1992, Childs was transported from prison to the John Sealy Hospital, at which time his personal belongings and legal papers were stored by the property officer, Mr. Tibbs. The district court found that upon his return from the hospital, Childs was informed by Tibbs on May 15, 1992, that the property could not be located. Childs filed his complaint on September 14, 1994.

Childs maintains that Tibbs misled him into believing that the property could be found ultimately, and thus the action did not accrue until some months after the initial request. However, Childs knew, or had reason to know, of the loss as of May 15, 1992, the day when he was apprised of the "critical fact" that the property was missing. See Freeze, 849 F.2d at 175.

Even assuming, arguendo, that the complaint was timely, Childs has failed to allege a constitutional claim. Neither negligent or intentional deprivations of property by state officials rise to the level of due process violations if state

law provides adequate postdeprivation remedies. Hudson v. Palmer, 468 U.S. 517, 533-34 (1984); Marshall v. Norwood, 741 F.2d 761, 763-64 (5th Cir. 1984). Texas provides an adequate postdeprivation remedy for Childs' lost-property claim. See Tex. Civ. Prac. & Rem. Code Ann. § 101.021 (West 1986).

If a criminal defendant is represented by counsel, he has constitutionally sufficient access to the courts. See Tarter v. Hury, 646 F.2d 1010, 1014 (5th Cir. 1981). Childs admits that he was represented by an attorney on his direct appeal. He has not alleged a constitutional claim.

The district court did not abuse its discretion by dismissing the complaint as frivolous because both the lost-property claim and the denial-of-access-to-the-courts claim lack an arguable legal basis. See Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

AFFIRMED.