

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10947
Conference Calendar

DAVID J. FRANKLIN,

Plaintiff-Appellant,

versus

JIM BOWLES, Sheriff of
Dallas County; LONNIE
BOLDEN, Bailiff; SAM
REESE, Bailiff,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:96-CV-1943-H
- - - - -

June 18, 1997

Before SMITH, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:*

David J. Franklin, Texas prisoner # 654550, argues that the district court erred in dismissing his complaint for failure to state a claim upon which relief can be granted based on its being time-barred.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

We have reviewed the record, including the district court's order, and the appellant's brief, and find that the district court did not err in dismissing Franklin's complaint based on its being barred by the applicable statute of limitations. See Gartrell v Gaylor, 981 F.2d 254, 256 (5th Cir. 1993). Further, even assuming that the new allegations raised in Franklin's brief are true, he has still failed to allege facts that show that the dismissal of his complaint as time-barred was error, plain or otherwise. See United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc).

Because Franklin has failed to raise an issue of arguable merit, his appeal is DISMISSED as frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

Franklin's request for a temporary restraining order is DENIED.

Franklin is cautioned that any future frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. Franklin is cautioned further to review any pending appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTION WARNING ISSUED.