

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50395  
Summary Calendar

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PAUL JAMES KOUMJIAN,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-94-CV-374  
- - - - -

September 24, 1998

Before DAVIS, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:\*

Paul James Koumjian, Texas prisoner # 582874, appeals from the district court's dismissal of his 42 U.S.C. § 1983 complaint as barred by the doctrine of in forma pauperis res judicata. Koumjian's assertion of district court error is supported by the record. In the § 1983 complaint Koumjian filed in April 1993 in the Northern District of Texas, he complained only of the medical care prison officials provided for an injury to his arm. In his § 1983 complaint in the district court below, Koumjian iterated

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the claims of inadequate medical care vis-a-vis the arm injury. Koumjian also complained, however, about the retaliation he suffered as a result of filing the earlier § 1983 action in the Northern District of Texas. He also asserted a claim of deliberate indifference concerning an injury that occurred after he filed his complaint in Northern Texas in which he alleged that he suffered three broken ribs.

Based on the time Koumjian's asserted constitutional violations occurred, he could not have raised either the retaliation claim or the second deliberate-indifference claim in his earlier § 1983 complaint. Accordingly, the doctrine of res judicata does not bar these claims. See United States v. Shanbaum, 10 F.3d 305, 310 (5th Cir. 1994). The district court erred by sua sponte determining otherwise. See Nagle v. Lee, 807 F.2d 435, 438 n.2 (5th Cir. 1987). The district court's judgment therefore is REVERSED and the cause is REMANDED to the district court for further proceedings in light of this ruling. Koumjian's motion to file a third supplemental brief is DENIED.

REVERSED AND REMANDED; MOTION DENIED.