

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-20197  
Conference Calendar

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STEVE ALVARADO,

Plaintiff-Appellant,

versus

M. CAROL HEALY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-98-CV-1659  
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February 13, 2001

Before SMITH, BARKSDALE and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Steve Alvarado, Texas inmate # 570362, appeals the district court's denial of his motion for reconsideration of its dismissal of his civil rights complaint as time-barred. When, as in the instant case, the face of a in forma pauperis complaint clearly shows that the claims asserted are barred by the applicable statute of limitations, dismissal under 28 U.S.C. § 1915 is proper. Gonzales v. Wyatt, 157 F.3d 1016, 1019-20 (5th Cir. 1998). Thus, the district court did not abuse its discretion when it denied Alvarado relief under Fed. R. Civ. P. 60(b) from

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 dismissal of his suit as time-barred. See Travelers Ins. Co. v. Liljeberg Enter., Inc., 38 F.3d 1404, 1408 (5th Cir. 1994).

The judgment of the district court is AFFIRMED. Alvarado's appeal is without arguable merit and, thus, frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2. This dismissal of a frivolous appeal following the district court's dismissal of the lawsuit for failure to state a claim brings Alvarado under the purview of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). If one other district court action or appeal filed by Alvarado is dismissed as frivolous, malicious, or for failure to state a claim, he will be barred from bringing a civil action or appeal as a prisoner proceeding in forma pauperis unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.