

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-41162  
Conference Calendar

---

RANDY L. DANIELS,

Plaintiff-Appellant,

versus

CORRECTIONS CORP OF AMERICA, ET AL.,

Defendants-Appellees.

- - - - -  
Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 94-CV-988  
- - - - -

(January 26, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,  
Circuit Judges.

PER CURIAM:\*

Randy L. Daniels appeals the dismissal of his civil rights complaint pursuant to 28 U.S.C. § 1915(d). A complaint filed in forma pauperis (IFP) may be dismissed as frivolous if it lacks an arguable basis in fact or law. 28 U.S.C. § 1915(d); Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). A § 1915(d) dismissal is reviewed for abuse of discretion. Ancar, 964 F.2d at 468.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Daniels's claims are time-barred. Because there is no federal statute of limitations for actions brought pursuant to 42 U.S.C. § 1983, federal courts borrow the forum state's general personal injury limitations period. Ali v. Higgs, 892 F.2d 438, 439 (5th Cir. 1990); Owens v. Okure, 488 U.S. 235, 249-50, 109 S. Ct. 573, 102 L. Ed. 2d 594 (1989). In Louisiana, the applicable period is one year. La. Civ. Code Ann. art. 3492 (West Supp. 1992); Elzy v. Roberson, 868 F.2d 793, 794 (5th Cir. 1989). Although Louisiana law governs the limitations period and the tolling exceptions, federal law governs when a cause of action arises. Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). Under federal law, a cause of action arises "when the plaintiff knows or has reason to know of the injury which is the basis of the action." Id. (quoting Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980) (further citations omitted)).

Daniels was aware of his claims against the defendants as early as October 6, 1992. The last date he was allegedly denied access to the courts was in April 1993 when he did not receive requested legal materials from Chris Bowman. The instant complaint was filed on May 27, 1994. Although he states that he sought help from Angie Martin after March 1993, he did not name Martin in either of his amended complaints or in his attempted amended complaint. Moreover, his argument that he did not discover that his civil rights had been violated until he was transferred to a facility with an adequate law library in June 1993 so as to fall within the applicable statute of limitations fails because Daniels was nevertheless in possession of the facts

of his claims as early as October 6, 1992. Therefore, the district court did not abuse its discretion when it dismissed his claims as time-barred.

Daniels argues that the district court erred by not permitting him to amend his complaint a second time. This Court reviews the district court's denial of leave to amend a complaint for abuse of discretion. Ashe v. Corley, 992 F.2d 540, 542 (5th Cir. 1993). Under Fed. R. Civ. P. 15(a), leave to amend should be freely granted when justice so requires. The Court, however, will affirm the denial of a motion to amend when the motion is untimely filed or when amendment would be futile. Avatar Exploration, Inc. v. Chevron, U.S.A., 933 F.2d 314, 321 (5th Cir. 1991). "Clearly, if a complaint as amended is subject to dismissal, leave to amend need not be given." Pan-Islamic Trade Corp. v. Exxon Corp., 632 F.2d 539, 546 (5th Cir. 1980), cert. denied, 454 U.S. 927 (1981).

Daniels was permitted to amend his complaint once. Because the claims asserted in his second attempt to amend his complaint were futile because they were time-barred, the district court did not abuse its discretion when it refused his motion to amend.

The judgment of the district court is AFFIRMED.