

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-2800  
Conference Calendar

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RALPH CATO,

Plaintiff-Appellant,

versus

DAN MORALES, Attorney General,  
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-92-2244  
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

Ralph Cato's July 1992 complaint alleged a 42 U.S.C. § 1983 cause of action for violations of the Fourth Amendment arising in March 1989. A two-year statute of limitations applies. Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). Cato's allegation that the cause of action actually arose in November 1990 may not be made for the first time on appeal. Self v. Blackburn, 751 F.2d 789, 793 (5th Cir. 1985). Furthermore, a complaint about a constitutional defect in a criminal conviction for which Cato is

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in custody must be brought in a habeas corpus proceeding first. Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117, 1119 (5th Cir. 1987).

As Cato knew in March 1989 that items were seized, his cause of action for their return arose at that time. Russell v. Board of Trustees, 968 F.2d 489, 493 (5th Cir. 1992). Cato may not allege incompetence for the first time on appeal. Self, 751 F.2d at 793.

The complaint has no basis in law. The district court did not abuse its discretion in dismissing the suit as frivolous. Denton v. Hernandez, --- U.S. ---, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992).

AFFIRMED.