

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 98-11157  
Summary Calendar

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WOODROW WILSON WILLIAMS,

Plaintiff-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, INSTITUTIONAL DIVISION; RONALD  
DREWRY, Warden; C. RAINES, Warden, Assistant Warden; K.  
SCOTT; Assistant Warden; D. PORTER, Grievance Coordinator; B.  
PRUITT; MAXWELL; LOUISE JEAN HURD, DR.; HARMAN  
SCHEAFFER, DR.; M. HILL, Correctional Officer III; H.  
O'CONNOR, Correctional Officer III; M. UNIFIELDS, Lieutenant;  
B. WEST, Licensed Vocational Nurse; GRAY, Licensed Vocational  
Nurse; HENDRICKS MEDICAL DEPARTMENT,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:98-CV-160-C

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May 31, 1999

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Woodrow Wilson Williams, Texas prisoner # 672377, appeals the district court's dismissal of his civil rights complaint for failure to pay the initial partial filing fee and failure to indicate good cause for his failure to pay. Williams has asserted that he misunderstood the order of the district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5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

court and that he had thought that the initial partial filing fee would be withdrawn automatically from his account and that his authorization was not needed.

A district court has inherent power to dismiss *sua sponte* for failure to prosecute. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 1388-89, 8 L. Ed. 2d 734 (1962). We review such a dismissal for abuse of discretion. *See Martinez v. Johnson*, 104 F.3d 769, 772 (5<sup>th</sup> Cir.), *cert. denied*, \_\_\_ U.S. \_\_\_, 118 S. Ct. 195, 139 L. Ed. 2d 133 (1997). Although the district court dismissed Williams's suit without prejudice, he is effectively barred from refileing because of the two-year statute of limitations. *See Owens v. Okure*, 488 U.S. 235, 249-50, 109 S. Ct. 573, 582, 102 L. Ed. 2d 594 (1989) (holding that federal courts should apply the general personal-injury statute of limitations of the forum state for 42 U.S.C. § 1983 claims); TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (West 1998) (providing a two-year injury limitations period in Texas); *see also Price v. Digital Equip. Corp.*, 846 F.2d 1026, 1027 (5<sup>th</sup> Cir. 1988) (stating that, where timely-filed Title VII suit was dismissed without prejudice for want of prosecution, the suit did not toll the limitations period for the claim). Thus, the dismissal operates as a dismissal with prejudice. *See Long v. Simmons*, 77 F.3d 878, 880 (5<sup>th</sup> Cir. 1996) (stating that statute of limitations can cause a dismissal without prejudice to operate as a dismissal with prejudice). Although a dismissal with prejudice for want of prosecution is a discretionary matter, we generally permit it "only in the face of a clear record of delay or contumacious conduct by the plaintiff." *Colle v. Brazos County, Tex.*, 981 F.2d 237, 243 (5<sup>th</sup> Cir. 1993) (citation omitted). It does not appear from the face of the record that Williams's failure to pay the partial filing fee resulted from delay or contumacious conduct. It is therefore ORDERED that the judgment of the district court dismissing Williams's complaint be VACATED and that the case be REMANDED for further proceedings.

VACATED AND REMANDED.