

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-50166
Conference Calendar

SAMUEL FICARO PENA,

Plaintiff-Appellant,

versus

JOSEPH L. BISBEE, ATF Agent; MCALLISTER,
ATF Agent; DONNIE A. CARTER, ATF Agent;
TIM L. BRIAN, ATF Agent; CHARLES E. WALLACE,
ATF Agent; MALCOLM W. BRADY, ATF Agent; JOHN
T. PANEZOTT, CCDTF; JOHN DOE, County Sheriff,
Columbiana County, Ohio; CATHY GAMBLE, CCDTF;
JOHN DOE, Columbiana, Ohio; JOHN DOE, East Liverpool,
Ohio; JOHN DOE, East Palestine, Ohio; JOHN DOE, #2,
Liverpool, Ohio; JOHN DOE, Salem, Ohio; JOHN DOE,
Wellsville, Ohio; RONALD B. BAKEMAN, Assistant U.S.
Attorney; SUSAN PRITCHARD; JOHN DOE, #1, IRS, San
Antonio; JOHN DOE, #2, IRS, Houston, Texas,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-98-CV-1013-DWS

August 24, 1999

Before KING, Chief Judge, and DAVIS and SMITH, Circuit Judges.

PER CURIAM:*

Samuel Ficaró Pena, federal prisoner #50360-098, appeals
from the dismissal of his *Bivens v. Six Unknown Named Agents of
Federal Bureau of Narcotics*, 403 U.S. 388 (1971), action as time-

* 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that this opinion should not be published and is not precedent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.

barred. Pena requests appointment of counsel; Pena's request is DENIED. Pena contends in cursory fashion that his complaint was not time-barred because the limitations period did not begin to run until the date of this court's October 7, 1998, opinion in *Pena v. United States*, 157 F.3d 984 (5th Cir. 1998), and that his complaint was an attempt to amend his pleadings in compliance with that opinion.

Pena's complaint in the instant case was time-barred. *Pena*, 157 F.3d at 987. Pena has filed an amendment in the case that was remanded by this court and counsel has been appointed to represent him in that case.

Pena's appeal is without arguable merit and is frivolous. Accordingly, the appeal is DISMISSED. 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). We caution Pena that once he accumulates three strikes, he may not proceed in forma pauperis (IFP) in any civil action or appeal filed while he is in prison unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; WARNING ISSUED.