

Appendix

United States Court of Appeals
for the Fifth Circuit

No. 25-10342

United States Court of Appeals
Fifth Circuit

FILED

August 4, 2025

Lyle W. Cayce
Clerk

ANTOINE DEMONE STEPHENS,

Plaintiff—Appellant,

versus

TARRANT COUNTY DISTRICT ATTORNEY OFFICE;
SHARON WILSON; OFFICER DAWLEY,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:25-CV-68

ON PETITION FOR REHEARING

Before SMITH, HIGGINSON, and WILSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

Appendix - A

United States Court of Appeals for the Fifth Circuit

No. 25-10342
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 16, 2025

Lyle W. Cayce
Clerk

ANTOINE DEMONE STEPHENS,

Plaintiff—Appellant,

versus

TARRANT COUNTY DISTRICT ATTORNEY OFFICE;
SHARON WILSON; OFFICER DAWLEY,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:25-CV-68

Before SMITH, HIGGINSON, and WILSON, *Circuit Judges.*

PER CURIAM:*

Antoine Stephens, Texas prisoner #1419836, appeals the dismissal of his 42 U.S.C. § 1983 civil rights action as frivolous under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), based on the district court's finding that the complaint was both untimely and barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). We review *de novo* the dismissal of a § 1983 complaint as frivolous

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

under §§ 1915(e)(2) and § 1915A(b). *See Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005); *Samford v. Dretke*, 562 F.3d 674, 678 (5th Cir. 2009).

On appeal, Stephens does not address the district court's time-bar or *Heck* determinations. His failure to identify any error in the district court's reasons for dismissing his § 1983 action is the same as if he had not appealed at all. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Stephens has accordingly waived any challenge to the dismissal of his § 1983 action. *See Hannah v. United States*, 523 F.3d 597, 600 n.1 (5th Cir. 2008). The judgment is AFFIRMED.

The dismissal of Stephens's § 1983 complaint as frivolous counts as a strike under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 537 (2015). Accordingly, Stephens is WARNED that if he accumulates three strikes, he will not be able to proceed *in forma pauperis* in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ANTOINE DEMONE STEPHENS,

Plaintiff,

V.

**TARRANT COUNTY DISTRICT
ATTORNEY'S OFFICE,
ET AL.,**

Defendants.

§
§
§
§
§
§
§
§
§
§
§

NO. 4:25-CV-068-O

ORDER OF DISMISSAL

Plaintiff, Antoine Demone Stephens, currently confined in the Wainwright Unit of the Texas Department of Criminal Justice, filed a civil rights action against Defendants, Tarrant County District Attorney's Office,¹ Sharon Wilson, and Officer Dowley, alleging that they denied him access on collateral review of his underlying criminal case. Public records of which the Court takes judicial notice reflect that Plaintiff was convicted of first-degree murder and sentenced to sixty years' confinement. His conviction was affirmed and his petition for discretionary review dismissed as untimely. *Stephens v. State*, No. 2-07-052-CR, 2008 WL 467275 (Tex. App.—Fort Worth Feb. 21, 2008, pet. dism'd). His state application for writ of habeas corpus was filed one day before the limitations period expired and his federal application was dismissed as untimely. *Stephens v. Thaler*, No. 4:11-CV-565-Y, 2011 WL 7006880 (N.D. Tex. Nov. 18, 2011), *adopted*, 2012 WL 104936 (N.D. Tex. Jan. 12, 2012). The Court determined that Plaintiff had not shown that he was entitled to equitable tolling, that is, he had not shown that he had been actively misled

¹ The "Tarrant County District Attorney's Office" is not a jural entity that may be sued. The proper defendant would be Tarrant County. See *Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991).

by the State or prevented in some extraordinary way from asserting his rights. 2011 WL 7006880, at *3.

The face of the complaint reflects that Plaintiff's claims are barred by limitations. "There is no federal statute of limitations for actions brought pursuant to 42 U.S.C. § 1983." *Jackson v. Johnson*, 950 F.2d 263, 265 (5th Cir. 1992). The Court borrows the forum state's general personal injury limitations period, which in Texas is two years. *See* TEX. CIV. PRAC. & REM. CODE 16.003(a); *Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001). The point at which a claim accrues, however, is determined by federal law. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). Under § 1983, a cause of action accrues when the "the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." *Walker v. Epps*, 550 F.3d 407, 414 (5th Cir. 2008) (quoting *Piotrowski*, 237 F.3d at 576)). Here, Plaintiff knew at the latest that he had been injured when he was not granted equitable tolling to pursue his federal habeas petition.

Even if Plaintiff's claims were not barred by limitations, the law is clear that in order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions that would render his conviction or sentence invalid, Plaintiff must prove that the conviction or sentence has been reversed or otherwise declared invalid. Otherwise, the claim is not cognizable under § 1983. *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). "[C]ivil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." *Id.* at 486. Plaintiff does not dispute that the underlying conviction has not been set aside, as that is the relief he seeks.

Plaintiff's claims are **DISMISSED** pursuant to the authority of 28 U.S.C. §§ 1915(e)(2) and 1915A(b).

SO ORDERED this **29th day of January, 2025**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ANTOINE DEMONE STEPHENS,

Plaintiff,

V.

TARRANT COUNTY DISTRICT
ATTORNEY'S OFFICE,
ET AL.,

Defendants.

§
§
§
§
§
§
§
§
§
§

NO. 4:25-CV-068-O

FILING FEE ORDER

The Court, having considered the papers and pleadings filed in this action in light of the Prison Litigation Reform Act of 1995, hereby **ORDERS** as follows:

1. Plaintiff's application to proceed *in forma pauperis* is **GRANTED**.
2. The agency having custody of Plaintiff shall, when funds exist in Plaintiff's inmate trust account or institutional equivalent, forward to the Court an initial partial filing fee of \$14.65.
3. Plaintiff shall pay \$335.35, the balance of the filing fee, in monthly installments as provided in 28 U.S.C. § 1915(b)(2). After payment of the initial partial filing fee, the agency having custody of Plaintiff shall deduct 20% of each deposit made to Plaintiff's inmate trust account or institutional equivalent and forward payments to the Court on a regular basis until the entire filing fee is paid, provided the account exceeds \$10.00.
4. Service of process shall be withheld pending judicial screening pursuant to 28 U.S.C. § 1915(e)(2).
5. No amendment or supplements to the complaint shall be filed without prior Court approval or order. A complete amended complaint shall be attached to any motion to amend.

Appendix - D

6. All discovery in this case is stayed until defendants are ordered to answer by the Court.

7. No motions for appointment of counsel shall be filed until the Court has completed its screening pursuant to 28 U.S.C. § 1915(e)(2), which may include a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985), the issuance of a questionnaire pursuant to *Watson v. Ault*, 525 F.2d 886 (5th Cir. 1976), or such other proceedings as deemed appropriate by the Court.

8. Plaintiff shall notify the Court of any change of address by filing a written Notice of Change of Address with the clerk. Failure to file such notice may result in this case being dismissed for want of prosecution.

9. The clerk shall transmit a copy of this order to the inmate accounting office or other person(s) or entity with responsibility for assessing, collecting, and remitting to the Court the filing fee payments on behalf of inmates, as designated by the facility in which Plaintiff is confined.

SO ORDERED this 29th day of January, 2025.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ANTOINE DEMONE STEPHENS,

Plaintiff,

V.

TARRANT COUNTY DISTRICT
ATTORNEY'S OFFICE,
ET AL.,

Defendants.

§
§
§
§
§
§
§
§
§
§

NO. 4:25-CV-068-O

FILING FEE ORDER FOR APPEAL


Consistent with the order granting leave to proceed *in forma pauperis* on appeal, the Courthereby **ORDERS** as follows:

1. The agency having custody of Plaintiff shall, when funds exist in Plaintiff's inmate trust account or institutional equivalent, forward to the Court an initial partial filing fee for appeal of \$8.50.
2. Plaintiff shall pay \$596.50, the balance of the appellate filing fee, in monthly installments as provided in 28 U.S.C. § 1915(b)(2). After payment of the initial partial filing fee, the agency having custody of Plaintiff shall deduct 20% of each deposit made to Plaintiff's inmate trust account or institutional equivalent and forward payments to the Court on a regular basis until the entire filing fee is paid, provided the account exceeds \$10.00.
3. Plaintiff shall notify the Court of any change of address by filing a written Notice of Change of Address with the clerk. Failure to file such notice may result in this case being dismissed for want of prosecution.

Appendix-E

4. The clerk shall transmit a copy of this order to the inmate accounting office or other person(s) or entity with responsibility for assessing, collecting, and remitting to the Court the filing fee payments on behalf of inmates, as designated by the facility in which Plaintiff is confined.

SO ORDERED this 3rd day of March, 2025.


Reed O'Connor
UNITED STATES DISTRICT JUDGE