LEXSEE 147 FED APPX 134

Williams v. Ga. Dep't of Def. Nat'l Guard Headquarters

No. 05-11275, Non-Argument Calendar

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

147 Fed. Appx. 134*; *2005 U.S. App. LEXIS 19046

August 31, 2005, Decided
August 31, 2005, Filed

NOTICE: [1]** NOT FOR PUBLICATION

SUBSEQUENT HISTORY: Rehearing denied by, Rehearing, en banc, denied by *Williams v. Ga. Dep't of Def. Nat'l Guard Headquarters, 2005 U.S. App. LEXIS 29466 (11th Cir., Nov. 14, 2005)*
US Supreme Court certiorari denied by *Williams v. Ga. DOD Nat'l Guard Headquarters, 126 S. Ct. 1318, 164 L. Ed. 2d 57, 2006 U.S. LEXIS 1224 (U.S., 2006)*

PRIOR HISTORY: Appeal from the United States District Court for the Northern District of Georgia. D. C. Docket No. 04-02415-CV-RLV-1.

DISPOSITION: AFFIRMED.

LexisNexis(R) Headnotes

COUNSEL: For Emmett L. Williams, Sgt., 1266 BEDFORD AVE, COLUMBUS, GA 31903-2402, (404) 295-9726, Appellant, Pro se.

For The State of Georgia Dept. of Defense National Gua, Ed Chamberlain, Sandra Bruce, Raymond Faunt, Cpt., Appellees: G. Melton Mobley, Jr., Lokey & Smith, ATLANTA, GA.

JUDGES: Before TJOFLAT, DUBINA and MARCUS, Circuit Judges.

OPINION

[*135] PER CURIAM:

Emmett L. Williams, proceeding *pro se,* appeals the district court's dismissal of his employment discrimination action, which he filed against the State of Georgia Department of Defense National Guard Headquarters and several of its employees, pursuant to Title VII of the Civil Rights Act of 1964, *42 U.S.C. § 2000e et seq.* The district court dismissed the action based on Williams's failure to file his complaint within the limitations period of *42 U.S.C. § 2000e-5(f)(1).* We review *de novo* a district court's interpretation and application of a statute of limitations. *See United States v. Am. States Ins. Co., 252 F.3d 1268, 1270 (11th Cir. 2001)*; **[**2]** *Harrison v. Digital Health Plan, 183 F.3d 1235, 1238 (11th Cir. 1999).*

After thorough review of the record and careful consideration of the parties' briefs, we find no reversible error and affirm.

The relevant procedural history is straightforward. In his complaint, Williams stated that he filed his racial discrimination charge with the Equal Employment Opportunity Commission ("EEOC") on September 10, 2001 and received his right-to-sue letter on May 18, 2002. On August 8, 2002, Williams filed a complaint, alleging violations of Title VII, in the district court. However, he voluntarily **[*136]** dismissed that action without prejudice. Over two years later, on August 19, 2004, Williams filed the instant complaint, again alleging Title VII violations. The district court dismissed the case as untimely.

A civil action under Title VII must be filed in the district court within 90 days of the claimant's receipt of a right-to-sue letter from the EEOC. *See 42 U.S.C. § 2000e-5(f)(1).* The limitations period commences upon the claimant's receipt of the right-to-sue letter. *Stallworth*

v. Wells Fargo Armored Servs. Corp., 936 F.2d 522, 524 (11th Cir. 1991); **[**3]** *Norris v. Florida Dept. of Health & Rehab. Servs., 730 F.2d 682 (11th Cir. 1984)*. Here, based on the facts alleged in the instant complaint, which include that Williams received the EEOC's right-to-sue letter on May 18, 2002, it is clear that he did not file this complaint within 90 days of receiving the EEOC's letter.

Williams argues that dismissal of the present action was inappropriate because, in connection with the 2002 case, his former attorney, Charles Best, failed to properly serve the Defendants and conspired with the Defendants by selling to them the filing papers that were going to be served. In his brief, he also generally alleges that the dismissal of his action violates various constitutional principles and statutes, including Title VII.

Construing Williams's arguments liberally, we note that his brief could be read as asserting that Best's conduct warranted equitable tolling of the limitations period. [1] The burden is on the plaintiff to show that he is entitled to the extraordinary remedy of equitable tolling. *See Ross v. Buckeye Cellulose Corp., 980 F.2d 648, 661 (11th Cir. 1993)*. We have held that attorney error, alone, is insufficient **[**4]** to toll the running of the statute of limitations. *Steed v. Head, 219 F.3d 1298, 1300 (11th Cir. 2000)* (citing *Sandvik v. United States, 277 F.3d 1269, 1270 (11th Cir. 1999))*. Moreover, we have declined to apply equitable tolling after a timely-filed complaint was dismissed without prejudice and a subsequent complaint was filed beyond the limitations period. *See Bost v. Fed. Express Corp., 372 F.3d 1233, 1242 (11th Cir. 2003)*; *see also United States v. Justice, 6 F.3d 1474, 1478-79 (11th Cir. 1993)* (stating general rule that filing of lawsuit later dismissed without prejudice does not automatically toll the statute of limitations); *Stein v. Reynolds Secs., Inc., 667 F.2d 33, 34 (11th Cir. 1982)* ("the fact that dismissal of an earlier suit was without prejudice does not authorize a subsequent suit brought outside of the otherwise binding period of limitations).

1 *See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998)* ("Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed"); *cf. Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir. 1990)* ("In the case of a pro se action, . . . the court should construe the complaint more liberally than it would formal pleadings drafted by lawyers.").

[5]** On this record, Williams neither filed his complaint within the applicable 90-day limitations period nor has he met his burden to show entitlement to equitable tolling. Accordingly, we affirm the district court's dismissal of Williams's complaint.

AFFIRMED.