

United States Court of Appeals for the Fifth Circuit

No. 25-40686

United States Court of Appeals
Fifth Circuit

FILED

April 30, 2026

Lyle W. Cayce
Clerk

HECTOR PACHECO-MORALES,

Plaintiff—Appellant,

versus

MICHAEL YOUNG, *Investigator - Gainesville Police Department*; EMMA GUZMON-RAMON, *First Court Appointed Attorney*; J. STANLEY SMITH, *State Attorney*; TOM WATT, *Sheriff, Grayson County Sheriff's Office*; COOKE COUNTY SHERIFF'S OFFICE; ET AL.,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:22-CV-591

Before GRAVES, HO, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Hector Pacheco-Morales, a former Texas prisoner, moves for leave to proceed in forma pauperis (IFP) on appeal from the district court's dismissal of his civil rights action pursuant to 28 U.S.C. § 1915A(b) as untimely or for failure to state a claim upon which relief may be granted. To proceed IFP, a

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

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litigant must demonstrate both financial eligibility and a nonfrivolous issue for appeal. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982); *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Pacheco-Morales contends that the district court should have found that his challenges to his 2019 Texas conviction are timely because defendants had conspired to conceal from him that the conviction was enhanced based on an offense that did not exist at the time of his conviction, which constituted a continuing violation. His challenge constitutes a single violation with continuing consequences, not a continuing violation. *See McGregor v. La. State Univ. Bd. of Supervisors*, 3 F.3d 850, 867 (5th Cir. 1993). Pacheco-Morales's conclusory assertions of a conspiracy are insufficient to state a claim for relief. *See Arsenaux v. Roberts*, 726 F.2d 1022, 1024 (5th Cir. 1982).

As to the argument that the district court erred in concluding individual defendants were entitled to qualified immunity or that governmental entities were entitled to immunity for claims arising under Title VI of the Civil Rights Act, the Americans with Disabilities Act, and the Rehabilitation Act, the district court did not grant immunity to any defendant. Pacheco-Morales's conclusory assertions that he stated valid claims of discrimination and failure to accommodate are insufficient to allege a valid claim. *See Kinash v. Callahan*, 129 F.3d 736, 738 (5th Cir. 1997).

Contrary to Pacheco-Morales's assertions, the district court liberally construed his pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). While he contends the district court should have construed his allegations as an ongoing retaliatory conspiracy, he has not shown he made sufficient allegations raising such a claim. *See United States v. Posada-Rios*, 158 F.3d 832, 857 (5th Cir. 1998); *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995).

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Finally, Pacheco-Morales alleges that the district court failed to consider his assertion that his access to legal materials and the law library was impeded while he was in custody. To the extent he raised such a claim in his live pleading, he has failed to show he alleged sufficient facts establishing he was prevented from submitting a necessary document to the courts in a timely manner. *See Brewer v. Wilkinson*, 3 F.3d 816, 821 (5th Cir. 1993). Although he now alleges the State prevented him from discovering the flaws in his Texas conviction and filing a timely challenge, he may not raise a new theory of relief or new facts for the first time on appeal. *See Stewart Glass & Mirror, Inc. v. U.S. Auto Glass Disc. Ctrs., Inc.*, 200 F.3d 307, 316–17 (5th Cir. 2000); *Theriot v. Par. of Jefferson*, 185 F.3d 477, 491 n.26 (5th Cir. 1999).

The appeal is without arguable merit and is thus frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, Pacheco-Morales's motion to proceed IFP on appeal is DENIED, and the appeal is DISMISSED. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.