

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 04-2562

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Timothy Lee Newton,

Appellant,

v.

Jeremiah Nixon,

Appellee,

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\* Appeal from the United States  
\* District Court for the Western  
\* District of Missouri.  
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\* [UNPUBLISHED]  
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Submitted: September 30, 2004

Filed: October 12, 2004

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Before MURPHY, FAGG, and SMITH, Circuit Judges.

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PER CURIAM.

Timothy Lee Newton brought an action for damages, claiming the Missouri Attorney General had engaged in fraud when he opposed Newton's earlier federal habeas corpus petition. The district court<sup>\*</sup> viewed this action as an attempt to revive the habeas case, and dismissed the complaint. After careful review, we conclude dismissal was proper under 28 U.S.C. § 1915(e)(2)(B)(I). Newton's action was legally frivolous because it depended on the habeas court's having wrongly determined his petition was time-barred. See Kelly v. Armstrong, 141 F.3d 799, 801

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<sup>\*</sup>The Honorable Ortrie D. Smith, United States District Judge for the Western District of Missouri.

(8th Cir. 1998) (issue preclusion). Accordingly, we affirm. We deny Newton's pending motions.

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