

December 12, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40066
Conference Calendar

GERALD DEWEY HENDERSON, I,

Plaintiff-Appellant,

versus

JOHNNY MASON, Dentist; TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION; UTMB; SHERA L. AVANT,
Mailroom; POLUNSKY UNIT MAILROOM STAFF; MRS. HASTINGS, Polunsky
Parole Worker; MRS. PRIMROSE; MR. MCKEE, Law Library Worker; MRS.
PUTMAN,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:05-CV-104

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Gerald Dewey Henderson, I, Texas inmate # 1105393, appeals the dismissal of his action under 42 U.S.C. § 1983. He also moves for the appointment of counsel. Because Henderson's appeal presents no "exceptional circumstances," his motion for appointment of counsel is denied. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Henderson's complaint named several defendants, including the mailroom staff at his prison unit. The district court dismissed the action without prejudice because Henderson failed to comply with the magistrate judge's order to file an amended pleading containing a short and plain statement setting forth his claims.

Henderson asserts that he prepared an amended pleading and presented it for mailing. He contends that the mailroom staff destroyed the pleading in retaliation for being named as defendants. Henderson argues that his amended pleading should be considered filed under the prison mailbox rule. See Spotville v. Cain, 149 F.3d 374, 377-78 (5th Cir. 1998).

Henderson has not shown that the district court abused its discretion in dismissing his action without prejudice. See McNeal v. Papasan, 842 F.2d 787, 789-90 (5th Cir. 1988). Accordingly, the judgment of the district court is affirmed.

AFFIRMED; MOTION FOR APPOINTMENT OF COUNSEL DENIED.