

July 9, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41717
Summary Calendar

JAMES ALLEN BUCHANAN,

Plaintiff-Appellant,

versus

TOM MCCOOL, Sheriff Harrison County Texas; UP HAIN, Lieutenant
Harrison County Sheriff Office; UP DIXON, Jail Administrator; UP
SAVASTANO, Sergeant Harrison County Jail; SHARON WOODS, Nurse,
Harrison County Jail,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:03-CV-110

Before HIGGINBOTHAM, DAVIS and PRADO, Circuit Judges.

PER CURIAM:*

James Allen Buchanan, Texas prisoner # 648694, appeals the district court's dismissal of his civil rights complaint for failure to comply with the court's order to pay a partial filing fee. Although the district court dismissed Buchanan's suit without prejudice, he is effectively barred from refileing by the two-year statute of limitations. See Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The record does not show that Buchanan's failure was the result of contumaciousness or an attempt to delay the proceedings. See McNeal v. Papsan, 842 F.2d 787, 790-92 (5th Cir. 1988). The record also does not show that the court considered lesser sanctions before dismissing Buchanan's lawsuit. See Long v. Simmons, 77 F.3d 878, 880 (5th Cir. 1996).

The judgment of the district court dismissing Buchanan's complaint is VACATED, and the case is REMANDED for further proceedings. Buchanan is cautioned that this opinion does not excuse him from compliance with the orders issued by the district court if the court elects to reinstate those orders upon remand. Buchanan is further cautioned that a failure to comply with the district court's orders in the future may result in dismissal of his lawsuit.

VACATED AND REMANDED.