

**April 28, 2004**

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-60492

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DENNIS J. ERBY,

Plaintiff-Appellee,

versus

MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
(00-CV-321)

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Before JOLLY, JONES and PRADO, Circuit Judges.

PER CURIAM:\*

The court has carefully considered this case in light of the briefs, oral argument and pertinent portions of the record. Having done so, we find no reversible error of fact or law. Although the inferential evidence of racial discrimination in regard to Erby's failure to promote claim was weak, it was not so nonexistent as to require taking the claim away from the jury. No doubt their view of this claim was also colored by the more compelling evidence on the retaliation claim. We find no

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

reversible error in the court's remitted award of damages or in its decision to deny a new trial.

**AFFIRMED.**