

**UNITED STATES COURT OF APPEALS**  
**FOR THE FIFTH CIRCUIT**

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No. 96-40465  
Summary Calendar

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ERIC ANTONIO HOWARD,

Plaintiff-Appellant,

versus

CHARLES C. BAILEY, in his official  
capacity as District Attorney for  
the 76th Judicial District, ET AL.,

Defendants,

KENNETH SPARKS, in his official  
capacity as Lieutenant in the Mt. Pleasant  
City Police Department; JIM BAYUK, in  
his official capacity as Agent DPS/TNT  
Task Force,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Eastern District of Texas  
(2:93-CV-99)

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December 6, 1996

Before POLITZ, Chief Judge, KING and PARKER, Circuit Judges

PER CURIAM:\*

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Eric Antonio Howard appeals an adverse summary judgment entered after partial affirmance and partial remand of his earlier appeal. Our review of the record and briefs discloses neither error nor abuse of discretion in the judgment on remand and, accordingly, we affirm, essentially on the basis of the facts as found, authorities cited, and analysis in the careful and thorough Report and Recommendation of United States Magistrate Judge filed April 4, 1996, which was approved and adopted by the district court by its order filed on April 30, 1996.

Howard's attempt to challenge the denial of appointment of counsel prior to the first appeal is beyond the scope of today's review.<sup>1</sup> His request for appointment of counsel herein is denied.<sup>2</sup> His suggestion that he should have been allowed further discovery before the trial court ruled on the summary judgment motions lacks factual basis and is frivolous.

The judgment appealed is AFFIRMED.

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<sup>1</sup>**Burroughs v. FFP Operating Partner, L.P.**, 70 F.3d 31 (5th Cir. 1995).

<sup>2</sup>**Ulmer v. Chancellor**, 691 F.2d 209 (5th Cir. 1982).