

January 28, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-51087
Summary Calendar

RAMON B. ISAAC, also known as Raymond B. Isaac,

Plaintiff-Appellant,

versus

TIMOTHY B. KEITH, Warden, ERNEST GUTIERREZ, Assistant
Warden; JOHN DOE, Bus Driver; JOHN DOE, Bus Driver # 2,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-02-CV-37

Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Ramon B. Isaac, Texas prisoner # 692378, appeals from the dismissal of his 42 U.S.C. § 1983 suit. He argues that the magistrate judge erred in granting Ernest Guterrez's motion for summary judgment and, additionally, that the magistrate judge abused his discretion both in denying Isaac's FED. R. CIV. P. 60(b) motion and in dismissing the claims against the unnamed defendants with prejudice. We affirm.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Isaac's complaint did not, as he contends on appeal, allege that Guterrez implemented an unconstitutional policy. As this is the only basis urged for reversal of the summary judgment dismissal, Isaac has not demonstrated an entitlement to relief. See Skotak v. Tenneco Resins, Inc., 953 F.2d 909, 912 (5th Cir. 1992). We further hold that the magistrate judge did not abuse his discretion in denying Isaac Rule 60(b) relief given that his affidavit would not have produced a different result if presented before summary judgment was awarded to Guterrez. See Goldstein v. MCI WorldCom, 340 F.3d 238, 257 (5th Cir. 2003).

Finally, we construe the magistrate judge's dismissal of the unnamed defendants as one made pursuant to FED. R. CIV. P. 41(b) and hold that there was no abuse of discretion. See Dorsey v. Scott Wetzel Servs., 84 F.3d 170, 171 (5th Cir. 1996).

AFFIRMED.