

December 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-10762  
Summary Calendar

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MARCELINO MARTINEZ,

Plaintiff-Appellant,

versus

FNU LUEVA; FNU GONZALEZ; JOHN DOE,  
Parole Officer; FNU GARRISON; FNU ORTIZ;  
FNU GARCIA; FNU ANDERSON; BILL CHEATHAM,  
SCC; JANIE COCKRELL, DIRECTOR, TEXAS  
DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL  
DIVISION; JOHN DOE, SCC; JANE DOE,

Defendants-Appellees.

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Appeals from the United States District Court  
for the Northern District of Texas  
USDC No. 5:03-CV-126-BG  
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Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Marcelino Martinez, Texas prisoner #526628, appeals the district court's denial of his motions for a preliminary injunction and for appointment of counsel. Martinez wishes to be placed in "super-seg[regation] protective custody" pending a disposition of his civil rights claims by the district court.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Martinez's civil rights claims against the TDCJ-ID Connally Unit personnel have been dismissed by the Western District of Texas for failure to state a claim upon which relief can be granted, see Martinez v. Ambriz, No. SA-03-CA-319-EP (W.D. Tex. May 21, 2003), and, although his claims against the TDCJ-ID Smith Unit personnel are still pending before the Northern District, Martinez is no longer housed at the Smith Unit and, thus, he is in no danger from the personnel or inmates at the Smith Unit. Accordingly, the district court did not abuse its discretion in denying Martinez's motion for a preliminary injunction. See White v. Carlucci, 862 F.2d 1209, 1211 (5th Cir. 1989); Women's Med. Ctr. v. Bell, 248 F.3d 411, 419 n.15 (5th Cir. 2001).

The district court also did not abuse its discretion in denying Martinez's motion for appointment of counsel, and his motion to this court for appointment of counsel is DENIED. See Ulmer v. Chancellor, 691 F.2d 209, 212, 213 (5th Cir. 1982).

AFFIRMED; MOTION DENIED.