

October 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-30338  
Conference Calendar

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ZAMBIE HENDERSON,

Plaintiff-Appellant,

versus

LOUISIANA DEPARTMENT OF CORRECTIONS;  
RICHARD L. STALDER; KELLY WARD; EARL  
BENSON; MICHAEL RHODES; SARAH BILBERRY;  
JOHNNIE SUMLIN; JOHN ROBINSON,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 00-CV-1251  
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Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:\*

Zambie Henderson, Louisiana prisoner # 335649, appeals the district court's dismissal without prejudice of his 42 U.S.C. § 1983 action for failure to exhaust his administrative remedies. He asserts that because his first prison grievance was dismissed as untimely, he exhausted his administrative remedies on his claims of an improper seizure of his legal materials. Henderson

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

has not established that a grievance that is dismissed as untimely constitutes an exhausted administrative remedy. See Days v. Johnson, 322 F.3d 863, 866 (5th Cir. 2003).

Henderson also asserts that he filed a second prison grievance challenging the constitutionality of prison regulations after his lawsuit was filed and that this grievance procedure was completed while his suit was pending. He has not established that his administrative remedies were exhausted before his lawsuit was filed. See 42 U.S.C. § 1997e(a); Wendell v. Asher, 167 F.3d 887, 891 (5th Cir. 1998).

Henderson has not shown that the district court erred in dismissing his civil rights lawsuit. See Powe v. Ennis, 177 F.3d 393, 394 (5th Cir. 1999). Consequently, the judgment of the district court is AFFIRMED.