

March 3, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40649  
Summary Calendar

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GENE E. DUDLEY,

Plaintiff-Appellant,

versus

N.L. CONNORS, Warden; UNKNOWN RICE, Caseworker;  
MARIA ROSE, Counselor; KATHLEEN HAWKS, Director  
of Bureau of Prisons, Washington, D.C.; PAUL  
NICHOLAS; JOHN 2-5 DOES; R. ROUT, Mailroom  
Personnel at El Reno Federal Correctional Institute;  
UNKNOWN WILBURN, Officer, Mailroom Personnel;  
RICHARD GOODSEAL, Mailroom Personnel; UNKNOWN  
HENDERSON; Lieutenant, SHU Housing Unit Manager;  
UNKNOWN HAMM, Officer; INSTITUTIONAL MANAGEMENT  
SYSTEM OFFICER, El Reno Federal Correctional  
Institute Management System Officer,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 5:00-CV-308

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Before GARWOOD, EMILIO M. GARZA and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Gene E. Dudley, federal prisoner # 10961-045, appeals the

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 R. 47.5 the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismissal of his civil rights complaint. *See Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). Dudley filed a purported notice of appeal from the judgment of dismissal; however, that pleading did not "clearly evince" an intent to appeal, as the primary relief requested was reconsideration and Dudley sought to appeal only in the alternative. *See Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). The pleading therefore did not constitute a timely notice of appeal from the judgment dismissing the complaint with prejudice, and, consequently, we have jurisdiction only to review the denial of his FED. R. CIV. P. 60(b) motion, from which he did file a timely notice of appeal, but our review is only for an abuse of discretion. *See Lancaster v. Presley*, 35 F.3d 229, 231 (5th Cir. 1994).

Dudley's contention that his proceedings were rendered unfair because the district court failed to consider his objections prior to adopting the recommendation of the magistrate judge is frivolous given that the district court did ultimately review the objections and deemed them meritless. Also frivolous is his contention that we lack jurisdiction over this appeal because there was no final judgment; the district court adjudicated all claims against all defendants.

Dudley's conclusional allegations that the defendants fraudulently misrepresented whether his claims were exhausted are an insufficient basis on which to grant Rule 60(b)(3) relief. *See*

*Gov't Fin. Servs. One Ltd. P'ship v. Peyton Place, Inc.*, 62 F.3d 767, 772 (5th Cir. 1995). Finally, with respect to Dudley's argument that his unexhausted claims were erroneously dismissed with prejudice he has demonstrated no abuse of the district court's discretion in denying Rule 60(b) relief in that respect. See *Edwards v. City of Houston*, 78 F.3d 983, 995 (5th Cir. 1996) (abuse of discretion is standard of review of denial of Rule 60(b) relief).

AFFIRMED.