

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 8, 2007

Charles R. Fulbruge III
Clerk

No. 06-30663
Summary Calendar

MICHAEL D MARLIN

Plaintiff-Appellant

v.

J YOUNG; S MARLER; K EDENFIELD; ASSOCIATE WARDEN MCMEAL;
SCARLET LUSK; T VOICENE; S MILLION

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:05-CV-2172

Before KING, DAVIS and CLEMENT, Circuit Judges.

PER CURIAM:*

Michael D. Marlin, federal prisoner # 08387-003, appeals the district court's dismissal without prejudice of his *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), complaint for failure to exhaust administrative remedies. The district court based its decision on Marlin's complaint. Marlin argues that he fulfilled the exhaustion requirement.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

After the district court's decision, the Supreme Court held "that failure to exhaust is an affirmative defense under the [Prison Litigation Reform Act], and that inmates are not required to specially plead or demonstrate exhaustion in their complaints." *Jones v. Bock*, 127 S. Ct. 910, 921 (2007). Under *Jones*, the district court erred by dismissing the case because Marlin did not demonstrate in his pleadings that he had exhausted his claims.

Accordingly, the district court's judgment is vacated, and the case is remanded for further proceedings.

VACATED AND REMANDED.