

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20560
Summary Calendar

EUGENIO L. RODRIGUEZ,

Plaintiff-Appellant,

versus

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION; EVANS, Sgt.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-94-2933)

July 2, 1997

Before HIGGINBOTHAM, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Eugenio L. Rodriguez, Texas prisoner # 382692, appeals the dismissal of his civil rights complaint, in which he alleged that he had been denied adequate medical care. We cannot determine from the record the basis of the court's dismissal, be it for mootness, justiciability, frivolousness, or failure to state a claim, because

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the court dismissed the complaint for the reasons stated at a *Spears* hearing, and the tape of the hearing is largely inaudible. Consequently, we cannot determine whether the district court abused its discretion in dismissing the complaint on the assurance that certain future medical treatment would be provided to Rodriguez. Accordingly, we REMAND the case to the district court for the limited purpose of reconstructing the record as it pertains to the *Spears* hearing to clarify the basis of the dismissal. See Fed. R. App. P. 10(c) and (d). Following remand, the district court shall return the case to this court for further proceedings.

LIMITED REMAND.