

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60121
Summary Calendar

DARILE JOHNSON,

Plaintiff-Appellant,

versus

HARVEY TACKETT; JAILER TWELLER;
JAILER TIPEE,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4-94-CV-69-S-B
- - - - -

January 30, 1997

Before GARWOOD, JOLLY, and DENNIS, Circuit Judges:

PER CURIAM:*

Darile Johnson, a Mississippi state prisoner, No. 27928, appeals the district court's sua sponte dismissal of his action for failure to state a claim. The district court's dismissal occurred prior to the completion of service of process against the defendants and without any hearing being held pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985) or any

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

questionnaire being presented pursuant to Watson v. Ault, 525 F.2d 886 (5th Cir. 1976).

Although the district court's dismissal was unusual because Johnson was not given any notice to allow him to clarify his factual allegations, an examination of Johnson's claims reveals that there is no set of facts that Johnson could allege which would allow him to state a viable claim for relief. See McCormack v. National Collegiate Athletic Ass'n, 845 F.2d 1338, 1343 (5th Cir. 1988); see also Wilson v. Seiter, 501 U.S. 294, 303 (1991); Hudson v. Palmer, 468 U.S. 517, 533 (1984); Wilson v. Lynaugh, 878 F.2d 846, 849 (5th Cir.), cert. denied, 493 U.S. 969 (1989). The district court's dismissal is AFFIRMED. Johnson's motion to object to the dismissal is DENIED as unnecessary.

AFFIRMED. MOTION DENIED.