

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20928
Summary Calendar

GERALD YALE DAVID,

Plaintiff-Appellant,

versus

FRED BECKER; TIMOTHY SIMMONS,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-91-CV-2340

September 3, 1999

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Gerald David, Texas prisoner # 547341, appeals the district court's denial of his postjudgment Fed. R. Civ. P. 60(b) motion challenging the district court's December 1993 order dismissing his original complaint. The Rule 60(b) motion was filed in December 1996, three years after the district court dismissed David's original complaint. David's arguments challenging the dismissal order under either Rule 60(b)(1) or (3) were untimely. David could have appealed the dismissal of his prior Rule 60(b)

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion, and he has not provided a valid reason for the lateness of the Rule 60(b) motion, the dismissal of which he now appeals. The motion was not filed within a reasonable time of the 1993 dismissal order, and the district court did not abuse its discretion by denying the second Rule 60(b) motion. See Travelers Ins. Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1408 (5th Cir. 1994). The district court's order is AFFIRMED.

David's objection to this court's order allowing the defendants to file an out-of-time letter brief is DENIED.