

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 98-11393
Summary Calendar

AARON ANTHONY SHEPPARD,

Plaintiff-Appellant,

versus

WELCH, Sergeant; BEIRA, Officer;
JONES, Officer; HENDRIX,
Correctional Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:98-CV-167

May 26, 1999

Before POLITZ, BARKSDALE and STEWART, Circuit Judges.

PER CURIAM:*

Aaron Anthony Sheppard, Texas prisoner #658333, appeals the district court's dismissal of his civil rights complaint for failure to pay the initial partial filing fee. Sheppard contends that he authorized withdrawal of the initial partial filing fee from his inmate trust account but that prison officials failed to make the deduction.

Because of the running of the statute of limitations, the district court's dismissal without prejudice has the effect of a dismissal with prejudice. Long v. Simmons, 77 F.3d 878, 880 (5th Cir. 1996). "A dismissal with prejudice is appropriate only if the failure to comply with the court order was the result of purposeful delay or contumaciousness and the record reflects that the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

employed lesser sanctions before dismissing the action.” Id. The record does not indicate that Sheppard failed to comply with the court’s order to secure a delay or out of contumaciousness or that the district court employed lesser sanctions before dismissing the action. Therefore, the district court abused its discretion in dismissing the action. See id. The district court’s judgment is VACATED and the case is REMANDED for further proceedings.