

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-50977  
Summary Calendar

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RICARDO LAGRANGE,

Plaintiff-Appellant,

VERSUS

DEBRA GALLOWAY, Lieutenant, ET AL.,

Defendants,

DEBRA GALLOWAY, Lieutenant; TRAVIS COUNTY  
SHERIFF; NORMAN MATTHEWS, Post Officer,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-99-CV-462-JN  
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June 15, 2000

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Ricardo Lagrange appeals the dismissal of his 42 U.S.C. § 1983 complaint against Debra Galloway, the Travis County Sheriff, and Norman Matthews for failure to state a claim, pursuant to 28 U.S.C. § 1915(e). Lagrange also appeals the district court's denial of his motion to amend his complaint to add additional parties and to allege the additional claim of deliberate indifference to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Lagrange's medical needs. Finally, Lagrange has moved this court to appoint appellate counsel.

We have reviewed the record and briefs submitted by the parties and find no error in the dismissal of Lagrange's failure to protect claim. See Farmer v. Brennan, 511 U.S. 825, 837 (1994); Neals v. Norwood, 59 F.3d 530, 533 (5th Cir. 1995); Oliver v. Collins, 914 F.2d 56, 60 (5th Cir. 1990).

Lagrange was entitled to amend his complaint once as of right because the defendants had not filed a responsive pleading. Fed. R. Civ. P. 15(a); see Barksdale v. King, 699 F.2d 744, 746-47 (5th Cir. 1983); McGruder v. Phelps, 608 F.2d 1023, 1025 (5th Cir. 1979). This right is absolute absent unusual circumstances. Aquilar v. Texas Dep't of Criminal Justice, 160 F.3d 1052, 1053 (5th Cir. 1998). Accordingly, because we find that the district court abused its discretion in denying Lagrange's motion to amend, we vacate and remand with instructions that the district court grant Lagrange's motion to amend and address the merits of his additional claim.

Lagrange's motion for appellate counsel is DENIED.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.