

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-51126
Conference Calendar

JOE MARTINEZ BUSTAMANTE, JR.,

Plaintiff-Appellant,

versus

PATRICK B. MORAN,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-99-CV-994-HG

June 15, 2000

Before JOLLY, DAVIS, and DUHÉ, Circuit Judges.

PER CURIAM:*

Joe Martinez Bustamante, Jr., appeals the district court's dismissal of this civil action for lack of subject-matter jurisdiction. Bustamante sued his former court-appointed attorney, alleging malpractice, negligence, and intentional infliction of emotional distress. He argues that the district court's dismissal was error because he sought in excess of \$75,000, the jurisdictional amount required to invoke diversity jurisdiction; he alternatively argues that his claims presented a federal question.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Bustamante has not demonstrated any error on the district court's part. Diversity jurisdiction does not exist because both he and Moran are residents of Texas, and his state-law tort claims do not implicate a federal question. See 28 U.S.C. §§ 1331 and 1332. His argument that federal-question jurisdiction existed because his claims arose out of counsel's ineffective assistance, in violation of the Sixth Amendment, is facially without merit. Accordingly, the district court did not err in sua sponte dismissing the lawsuit. See Fed. R. Civ. P. 12(h)(3). The instant appeal is frivolous and is therefore DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

APPEAL DISMISSED.