

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-40750  
Summary Calendar

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ROBERT LEE POWE,

Plaintiff-Appellant,

versus

GILBERT L. ENNIS, Sergeant, Beto I; ET AL.,

Defendants.

GILBERT L. ENNIS, Sergeant, Beto I; M. ALLEN, Correctional  
Officer III, Beto I; DAVID M. RAYMOND, Correctional Officer III,  
Beto I,

Defendants-Appellees,

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:97-CV-905  
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October 22, 2002

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

PER CURIAM:\*

Robert Lee Powe, Texas prisoner # 616956, appeals the district court's sua sponte dismissal without prejudice of his 42 U.S.C. § 1983 suit for failure to exhaust. This court previously determined that Powe had exhausted administrative remedies when

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

he filed a step one and step two grievance and "the state's time for responding thereto ha[d] expired," and remanded the case for further proceedings. Powe v. Ennis, 177 F.3d 393, 394 (5th Cir. 1999). The district court determined that the decision in Powe was erroneous in light of the Supreme Court's decision in Booth v. Churner, 532 U.S. 731, 739 (2001).

We read Booth as requiring a prisoner to exhaust prison administrative remedies even when the grievance procedures do not allow the relief sought by the prisoner. See Booth, 532 U.S. at 736-41. In Powe, this court determined when a claim may be considered exhausted. Powe, 177 F.3d at 394. Booth did not overrule this court's decision in Powe. The district court's judgment is VACATED and this case is REMANDED for further proceedings.