

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10449
Summary Calendar

JOHN SMITH,

Plaintiff-Appellant,

versus

TARRANT COUNTY TEXAS; TIM CURRY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(4:01-CV-97-Y)

December 12, 2002

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

PER CURIAM:*

Plaintiff-Appellant John Smith, Texas state prisoner # 641206, challenges the district court's dismissal of his 42 U.S.C. § 1983 civil rights lawsuit. Smith argues that the district court erred when it denied his motion to amend his complaint to substitute the Tarrant County Sheriff's Department in place of Tarrant County, Texas. The district court concluded that Smith's claims against Tarrant County were not cognizable under 42 U.S.C. § 1983, and Smith does not contest this conclusion in his appeal. Therefore,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the district court did not abuse its discretion when it denied leave to amend because an amendment substituting one party for another would have been futile. See McKinney v. Irving Indep. Sch. Dist., __ F.3d. __ (5th Cir. Oct. 18, 2002) (No. 01-10233), 2002 WL 31202748, *6.

Smith also argues that the district court erred when it denied his request for assistance of counsel. The district court did not treat Smith's request as a separate motion, but rather implicitly denied the request when it dismissed Smith's complaint. Smith has not shown that this is an exceptional case of the type and complexity warranting appointment of counsel. See Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982). Therefore, the district court's implicit denial of Smith's request for appointment of counsel was not an abuse of discretion.

The district court's judgment is
AFFIRMED.