

October 15, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-41040  
Summary Calendar

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GERMAN RODRIGUEZ,

Plaintiff-Appellant,

versus

RAMONIA COLLINS, Correctional Officer III;  
SHIRLENE HASTY, Sergeant; CYNTHIA CHOAT, Counselor Substitute I;  
CLIFTON MATTOX, Disciplinary Captain,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:02-CV-92  
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Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

German Rodriguez, Texas prisoner #748574, appeals from the dismissal of his 42 U.S.C. § 1983 action as frivolous. We do not address the merits of any of Rodriguez's appellate contentions.

The district judge is married to the magistrate judge, and he therefore should have recused himself under 28 U.S.C. § 455(a) so that another judge could review the magistrate judge's reports and recommendations. *See Jones v. Patrick*, No. 02-40846 (5th

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cir. Nov. 14, 2002)(unpublished; copy attached). Accordingly, we VACATE the judgment and REMAND the case with directions that the magistrate judge's reports and recommendations be considered by another district judge. See *Jones* at 2-3.

VACATED AND REMANDED.