

June 13, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-31116  
Summary Calendar

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MARK ANTHONY VINZANT,

Plaintiff-Appellant,

versus

WARDEN KENNDY, Orleans Parish Prison; CHARLES C. FOTI, JR.,  
Sheriff; MARCUS DILEO, Dr.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:03-CV-761  
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Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:\*

Mark Anthony Vinzant, federal prisoner # 27944-034, appeals from the district court's October 7, 2005, order denying his FED. R. Civ. P. 60(b) motion, seeking relief from the district court's dismissal of his action for failure to prosecute. See FED. R. CIV. P. 41(b). Vinzant argues that the district court abused its discretion in denying his Rule 60(b) motion because the record does not support a finding of a clear record of delay

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

or contumacious conduct but rather suggests mere negligence and reflects that he diligently pursued his claims.

This court reviews the district court's denial of a Rule 60(b) motion for abuse of discretion. Warfield v. Byron, 436 F.3d 551, 555 (5th Cir. 2006). Under this standard, "[i]t is not enough that the granting of relief might have been permissible, or even warranted--denial must have been so unwarranted as to constitute an abuse of discretion." Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). Vinzant has not shown "'unusual or unique circumstances justifying such relief.'" Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6, 8 (5th Cir. 1991) (quoting Pryor v. U.S. Postal Service, 769 F.2d 281, 286 (5th Cir. 1985)). Therefore, the judgment of the district court is AFFIRMED. Vinzant's motion for the appointment of counsel is DENIED. Vinzant also has filed a motion for an extension of time to file a reply brief. Because the proposed reply brief is devoted to arguing the merits of his civil rights claims, an issue not relevant to the issue of the district court's denial of his Rule 60(b) motion, Vinzant's motion for an extension of time to file it also is DENIED.