

February 23, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-20515
Summary Calendar

CORNELIUS R. WYATT,

Plaintiff-Appellant,

versus

JOHN DOE #1, Transportation TDCJ; JOHN DOE #2,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:06-CV-1343

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Cornelius R. Wyatt, Texas prisoner # 631802, appeals the district court's dismissal without prejudice of his civil rights complaint pursuant to 42 U.S.C. § 1997e for failure to demonstrate in his pleadings that he had exhausted his administrative remedies. Wyatt argues that the district court erred in dismissing his complaint because he filed Step 1 and Step 2 grievances to which prison officials failed to respond.

The Supreme Court recently held "that failure to exhaust is an affirmative defense under the [Prison Litigation Reform Act],

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and that inmates are not required to specially plead or demonstrate exhaustion in their complaints." Jones v. Bock, ___ S. Ct. ___, 2007 WL 135890, *11 (2007). The district court erred under Jones by requiring Wyatt to demonstrate, in his pleadings, that he had exhausted his claims. See id. Even under this circuit's law prior to Jones, Wyatt satisfactorily pleaded exhaustion by alleging that he had filed Step 1 and 2 grievances and that the time for responding to the Step 2 grievance had expired. See Underwood v. Wilson, 151 F.3d 292, 295-96 (5th Cir. 1998).

Accordingly, the district court's judgment is vacated, and the case is remanded for further proceedings.

VACATED AND REMANDED.