

April 9, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-41034
Summary Calendar

WAYNE ERNEST BARKER,

Plaintiff-Appellant,

versus

DR. JOSEPH TAYLOR; ANN SWEETEN,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:05-CV-87

Before JONES, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Wayne Ernest Barker, Texas prisoner # 900987, appeals the district court's dismissal of his pro se and in forma pauperis civil rights complaint pursuant to 42 U.S.C. § 1997e for failure to exhaust administrative remedies. Barker argues that the Texas Department of Criminal Justice grievance procedures were unavailable at the time of his injury. Alternatively, Barker asserts that he should be exempt from the § 1997e exhaustion requirement due to his physical and mental problems.

*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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 Supreme Court recently held "that failure to exhaust is an affirmative defense under the PLRA, and that inmates are not required to specially plead or demonstrate exhaustion in their complaints." Jones v. Bock, 127 S. Ct. 910, 921 (2007). Under Jones, the district court erred by dismissing the case because Barker did not demonstrate in his pleadings that he had exhausted his claims.

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

VACATED AND REMANDED.