

June 26, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-60123
Summary Calendar

THOMAS JOHNSON,

Plaintiff-Appellant,

versus

MISSISSIPPI DEPARTMENT OF CORRECTIONS; ADRIENNE CROFT,
Correctional Officer Trainee Pin #0913; MARYLEN REECE, "Sho"
Chairperson,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:05-CV-250

Before JOLLY, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Thomas Johnson, Mississippi prisoner # K6003, appeals the district court's sua sponte dismissal of his in forma pauperis civil rights complaint on the ground that he failed to exhaust administrative remedies as required by 42 U.S.C. § 1997e(a). Johnson asserted in his complaint that he was prevented from exhausting the Administrative Remedy Program steps by prison officials' failure to pick up his Step 2 grievance in a timely fashion. In dismissing the complaint for failure to exhaust, the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court relied on Johnson's assertion that his administrative appeal was denied as untimely without considering Johnson's stated reasons for such denial.

The Supreme Court recently held "that failure to exhaust is an affirmative defense under the [Prison Litigation Reform Act], and that inmates are not required to specifically plead or demonstrate exhaustion in their complaints." Jones v. Bock, 127 S. Ct. 910, 921 (2007). Accordingly, the district court's judgment is VACATED and the case is REMANDED for further proceedings.