

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 24, 2009

Charles R. Fulbruge III
Clerk

No. 08-40427
Summary Calendar

WAYNE ERNEST BARKER

Plaintiff-Appellant

v.

ANN SWEETEN; NURSE PRACTITIONER FUENTES; JULIE SWEETEN

Defendants-Appellees

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

Before SMITH, STEWART and SOUTHWICK, 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 also requests permission to file a supplemental appellate brief. The motion to file a supplemental brief is denied.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Barker admittedly made no attempt to pursue prison administrative remedies, but he argues that the dismissal of his complaint was error because the Texas Department of Criminal Justice grievance procedures were not available to him. He contends that he should be excused from the § 1997e exhaustion requirement due to his physical and mental problems, and he argues that the district court's dismissal of his complaint violates FED. R. APP. P. 28. We find no error in the district court's dismissal of the complaint. *See Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006); *Booth v. Churner*, 532 U.S. 731, 739-41 & n.6 (2001).

MOTION TO FILE SUPPLEMENTAL BRIEF DENIED; AFFIRMED.