IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 15-41457
Summary Calendar

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United States Court of Appeals
Fifth Circuit

FILED

March 9, 2017

Lyle W. Cayce
Clerk

HOWARD F. CARROLL,

Plaintiff-Appellant

v.

JOHN RUPERT, Warden, Coffield Unit; MICHAEL ROARK, Lieutenant, Coffield Unit; MICHAEL COLLUM, Lieutenant, Coffield Unit; GUY FERGUSON, Lieutenant, Coffield Unit; BRETT BUCKLEY; et al,

Defendants-Appellees

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:15-CV-569

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Before BENAVIDES, PRADO, and COSTA, Circuit Judges.

PER CURIAM:[*]

The court sua sponte grants rehearing, withdraws its previous opinion in this matter, *Carroll v. Rupert*, No. 15-41457, 2017 WL 763843 (5th Cir. Feb. 24, 2017) (unpublished), and substitutes the following.

Howard F. Carroll, Texas prisoner # 1067360, appeals the dismissal, without prejudice, of his 42 U.S.C. § 1983 complaint for want of prosecution

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 15-41457

and failure to obey an order. Carroll argues that the district court erred in dismissing his complaint. He also challenges the magistrate judge's denial of his motion for appointment of counsel. He further requests the appointment of appellate counsel.

The district court construed Carroll's October 2015 objections to the magistrate judge's report as a motion for relief from judgment, and it granted relief, vacating its order of dismissal and judgment. We construe the district court's action as arising under Federal Rule of Civil Procedure 59(e). *See Mangieri v. Clifton*, 29 F.3d 1012, 1015 n.5 (5th Cir. 1994). In view of the foregoing, this appeal is moot. *See Ctr. for Biological Diversity, Inc. v. BP America Prod. Co.*, 704 F.3d 413, 431 (5th Cir. 2013).

Accordingly, the appeal is DISMISSED AS MOOT. Carroll's request for appointment of appellate counsel is DENIED AS MOOT.