

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

United States Court of Appeals
Fifth Circuit

FILED

May 22, 2019

Lyle W. Cayce
Clerk

No. 18-20740
Summary Calendar

CHARLES OTIS HERRING,

Plaintiff–Appellant,

versus

NEWFIRST STATE BANK; GUY STOVALL, III; KIMBERLY KRUEGER;
PHILIP LEOPOLD; CHERYL ROACH; TINA FRICK,

Defendants–Appellees.

Appeal from the United States District Court
for the Southern District of Texas
No. 4:17-CV-3474

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Charles Herring sued NewFirst National Bank (which he inaccurately

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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calls NewFirst State Bank) and certain individuals for race discrimination under Title VII, 42 U.S.C. § 1981, and state-law theories. The district court converted the motion to dismiss to a motion for summary judgment and granted summary judgment.

The district court carefully explained its ruling in a concise but more-than-adequate five-page opinion entered December 24, 2018. The court recounted that Herring was discharged from a janitorial contract because surveillance video showed that he had stolen food from the bank. Herring had a subcontract with American Paper & Janitorial Products, Inc. The district court properly reasoned, *inter alia*, that “[w]hen Herring stole the pastries, he violated the contract. Paper did not violate the law by cancelling the contract.” Regarding Title VII, “Herring was never an employee, nor did he file a charge with the EEOC. As a result, Herring must lose.”

The summary judgment is **AFFIRMED**, essentially for the reasons advanced by the district court.