IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 92-2337
Summary Calendar

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WILLIS C. MCALLISTER,

Plaintiff-Appellant,

versus

TELXON CORPORATION, LARRY COLLINS and DIANA R. SIDES,

Defendants-Appellees.

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Consolidated with

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No. 92-2790
Summary Calendar

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WILLIS C. MCALLISTER

Plaintiff-Appellant,

versus

TELXON CORPORATION, ET AL.,

Defendants-Appellees.

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Appeals from the United States District Court for the Southern District of Texas
(CA-H-88-2229)

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(August 25, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

PER CURIAM:

These are consolidated appeals by plaintiff-appellant Willis C. McAllister (McAllister) in his suit against defendants-appellees Telxon Corporation (Telxon), Larry Collins (Collins), and Dana R. Sides (Sides). McAllister, who is black, complained that he was discharged in September 1987 from his employment with Telxon because of his race, in violation of Title VII. Collins and Sides were management employees of Telxon who supervised McAllister while he was employed there. Following a four-day bench trial in February 1992, the district court's judgment for Telxon, Collins, and Sides was entered March 30, 1992, and McAllister filed his notice of appeal therefrom April 28, 1992 (our cause No. 92-2337).

On May 5, 1992, McAllister filed in the district court a motion for appointment of counsel and on May 18, 1992, he filed in the district court an amended motion for appointment of counsel; by order dated June 24, 1992, and entered June 29, 1992, the district court denied the motion and amended motion; on July 6, 1992, McAllister filed in the district court a motion for reconsideration of the June 24, 1992, order; by order dated September 25, 1992, the district court denied the motion for reconsideration. On October 6, 1992, McAllister filed his notice of appeal from the September 25, 1992, order (our cause No. 92-2790).

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

McAllister's submissions on appeal demonstrate no reversible error, and we affirm.

The district court made detailed findings of fact and conclusions of law, which plainly exonerate defendants from Title VII violation or racial discrimination as to McAllister. The district court found, *inter alia*,

> ". . . even if McAllister established a *prima facie* case, Telxon, Collins and Sides articulated legitimate, nondiscriminatory reasons for his discharge. The legitimate, nondiscriminatory reasons include unsatisfactory job performance, unprofessional behavior, and insubordination . . . . The Court finds that McAllister failed to prove by a preponderance of the evidence that the legitimate, nondiscriminatory reasons offered by Telxon, Collins and Sides were a pretext for any unlawful purpose."

The district court's findings, which preclude any recovery by McAllister on any pleaded theory, are amply supported by the trial evidence, and McAllister has not demonstrated that they are clearly erroneous.

McAllister's other complaints in appeal No. 92-2337 are clearly without merit. His claim that he was entitled to a jury trial under "[t]he Civil Rights Act of 1991" is without merit, for the events complained of took place prior to 1988. *See Landgraf v. USI Film Products*, 114 S.Ct. 1483 (1994). In any event, McAllister never requested a jury trial in the district court. *See* FED. R. CIV. P. 38(d).

Nor did the district court abuse its discretion in overruling McAllister's counsel's motions to withdraw and McAllister's motion for continuance in order to try to find substitute counsel. McAllister filed this suit, through counsel, in June 1988. *After*

the case had been set for trial for February 25, 1992, McAllister's counsel, on January 21, 1992, and again on February 20, 1992, filed motions to withdraw, and McAllister sought a continuance to attempt to find new counsel. In ruling on the January 21 motionsSQMcAllister's motion for continuance was denied at the same timesSQthe district court stated that it "would entertain a motion for substitution that would not delay trial, but neither Medina [McAllister's counsel] nor McAllister have attempted to find substitute counsel." As to the second motion to withdraw, the district court determined that "[s]ome of Medina's concerns have been ongoing since the filing of the complaint; yet, the motions to withdraw were filed on the eve of trial. While the Court would have entertained a timely motion for substitution, the Court finds that, in the interests of justice and judicial economy, the motion should be denied." Neither motion to withdraw presented grounds which compelled or required withdrawal, and under the circumstances no abuse of discretion by the district court is demonstrated as to the motions to withdraw and motion for continuance.

McAllister's various complaints about scheduling demonstrate no abuse of discretion or prejudice (*e.g.,* McAllister complains of the late filing of a motion for summary judgment, which was never ruled on). As to the request for admissions, it does not appear that McAllister was thereby restricted in any way in his proof at the bench trial, or that the district court in its findings in any way relied on the admissions; nor do we in determining that the findings are amply supported by the trial evidence and are not clearly erroneous. No reversible error is shown by counsel's

questioning McAllister as to whether he had had an emotional outburst during mediation, a matter not referenced in the district court's findings. McAllister's remaining miscellaneous complaints are all without merit and do not warrant separate mention.

Assuming, *arguendo*, that No. 92-2790 is properly before us and presents anything for review, under the standards of *Gonzalez v. Carlin*, 907 F.2d 573, 580 (5th Cir. 1990), we find no abuse of discretion by the district court or other basis on which to set aside its September 25, 1992, order.

The judgment of the district court is

AFFIRMED.