

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Nos. 92-4784 & 93-4048  
Summary Calendar

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RANDY L. DANIELS,

Plaintiff-Appellant,

versus

JOHN R. HARRISON, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 92-CV-592

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April 22, 1993

Before JOHNSON, HIGGINBOTHAM, and DEMOSS, Circuit Judges.

PER CURIAM:<sup>1</sup>

In appeal No. 93-4048, Randy L. Daniels appeals from the district court's findings on remand that he did not timely file his notice of appeal from the district court's denial of his motion for appointment of counsel. The district court's findings may be upheld under either the "clearly erroneous" or "de novo" standards of review. The prison mail log for the relevant time period shows that Daniels did not mail his appeal timely, nor did

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<sup>1</sup>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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

he file an affidavit or other evidence to contradict the log entries. Therefore, the court's finding that Daniels did not file a timely notice of appeal is AFFIRMED.

In appeal No. 92-4784, Daniels appeals the dismissal of his suit as frivolous pursuant to 28 U.S.C. § 1915(d). The district court, however, recalled its order dismissing the suit and has not entered final judgment on the merits. Therefore, the appeal in No. 92-4784 is DISMISSED.