

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4859
Summary Calendar

JUAN GOMEZ,

Plaintiff-Appellant,

versus

UP MOTEN and UP ROSS,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(9:92 CV 65)

December 22, 1992

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Appellant Gomez filed this § 1983 prisoner civil rights complaint because he was unsatisfied with a prison disciplinary proceeding. The district court dismissed, finding that his complaint sounded in habeas corpus and required him to exhaust state remedies. Serio v. Member of Louisiana State Board of

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Pardons, 821 F.2d 1112, 1117, 1119 (5th Cir. 1987). We vacate and remand.

The magistrate judge, whose recommendation was accepted by the district court, concluded that Gomez's allegations must state a habeas claim because he complained of loss of his trusty class status. Gomez objected to the magistrate's report, contending that the loss of status was not material to the length or duration of his confinement. The record before the district court and this court consists solely of Gomez's original complaint plus his statements in a few pleadings filed with the court. The prisoner's characterization of the relief he seeks is not, however, dispositive. On remand, the court should obtain copies of Gomez's disciplinary records and determine for itself whether Serio applies.

VACATED and REMANDED with instructions.