

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3378

Summary Calendar

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ZINA GARRISON,

Plaintiff-Appellant,

versus

HARRY LEE, Sheriff of  
Jefferson Parish,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(C.A. 91-3643 M c/w 91-3778-M)

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(June 3, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Zina Garrison brings the present lawsuit pursuant to 42 U.S.C. § 2000e, claiming that Sheriff Harry Lee discriminated against her on the basis of race, ultimately discharging her from employment. The parties consented to trial before a magistrate judge. The magistrate judge rendered judgment in favor of Lee. Garrison appeals. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

Lee does not respond to the merits of Garrison's appeal. He argues instead that this court lacks jurisdiction to hear it. Lee bases this contention on the fact that subsequent to filing a notice of appeal to this court, Garrison filed a motion for rehearing and reconsideration before a district court. The district court judge denied Garrison's motion because, according to agreement between the parties, the proper avenue of appeal was to this court.

Prior to an amendment that took effect on December 1, 1993, Federal Rule of Appellate Procedure 4(a)(4) almost certainly would have required the conclusion that Garrison's motion nullified her notice of appeal.<sup>1</sup> Her confusion, as a pro se litigant, about the proper forum for challenging the magistrate judge's decision would have resulted in a windfall to Lee. Under the amendment to Rule 4(a)(4), however, Garrison's motion did not nullify her appeal but rather briefly postponed it. We have concluded that, in the absence of manifest injustice, the amendment applies retroactively.<sup>2</sup> No manifest injustice follows from addressing Garrison's appeal on the merits, and we do so.

II.

Garrison in essence wishes to try her case again. She does not contest the legal basis for the magistrate judge's judgment in

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<sup>1</sup> See, e.g., Craig v. Lynaugh, 846 F.2d 11 (5th Cir. 1988).

<sup>2</sup> See Burt v. Ware, 14 F.3d 256, 260 (5th Cir. 1994).

Lee's favor but rather asserts that the magistrate judge erred in concluding that no discrimination took place.

The basis for Garrison's suit against Sheriff Lee is unclear. Although there is significant evidence that Sheriff Lee treated Garrison differently than he did other employees, the treatment she received was favorable. The sheriff apparently owed Garrison's father political favors. This political connection enabled Garrison to secure employment, to obtain a desirable shift immediately upon her arrival at the Jefferson Parish Sheriff's Department, and to transfer to a position in the administrative branch of the department that normally would require many years of service.

For a significant period of time the sheriff protected Garrison from critical assessments by her superiors. However, when one day Garrison left her security post unmanned, marched to the sheriff's office, and presented him with audio tapes that she surreptitiously made of discussions she had with other employees of the department, the sheriff lost patience with Garrison. The sheriff's regulations and common courtesy proscribed secretive taping of conversations between colleagues. Garrison lost her administrative position and moved to a new and less pleasant one, guarding male inmates.

Ultimately, the stress of employment caused Garrison to exhaust her vacation and sick leave. She then continued to take time off, even though the sheriff had denied her request for a supplemental leave of absence. When Garrison failed to show up for

work, offering a note from a doctor saying that her failing mental health required her to do so, the sheriff fired her.

Perhaps the sheriff was unkind to take this action, although the evidence suggests that Garrison simply was not fit for her employment. More to the point, Garrison provided no evidence that racial animus motivated the sheriff in his decision.

The magistrate judge concluded that any unusual treatment Garrison received from Sheriff Lee was preferential, and dismissed her suit with prejudice. The record fully supports this conclusion.

AFFIRMED.