

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3749
Summary Calendar

DEBORAH B. MERRIELL,

Plaintiff-Appellant,

versus

DEPARTMENT OF TRANSPORTATION,
Frederico F. Pena, Secretary,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 92-1451 "N" (4))

(May 12, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Deborah B. Merriell appeals from the summary judgment dismissing her employment discrimination claims against the Department of Transportation. We **DISMISS** the appeal as frivolous. See Loc. R. 42.2.²

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

² Before filing his brief, the Secretary moved to dismiss the appeal because, *inter alia*, Merriell failed to file a sufficient brief in a timely manner. Although we denied that motion, we now conclude, after full consideration of the briefs and record, that the appeal is frivolous.

I.

On November 4, 1983, while employed by the United States Coast Guard, Merriell filed a complaint of employment discrimination with the Department of Transportation. The Agency accepted seven allegations of racial discrimination for investigation; and, on July 23, 1985, it issued a proposed disposition finding no discrimination. Merriell did not respond; and, on January 8, 1986, her complaint was cancelled. On July 30, 1986, Merriell appealed the cancellation; and the Equal Employment Opportunity Commission remanded the complaint to the Agency for further processing.

On August 11, 1986, the Agency issued a final decision finding no discrimination. Merriell again appealed; and, on September 18, 1987, the EEOC vacated the Agency decision and remanded the complaint to the Agency for further processing. On April 26, 1988, the Agency proposed that the Department of Transportation restore the pay lost by Merriell when she was charged with being AWOL on two occasions. On May 16, 1988, the Director of the Departmental Office of Civil Rights certified that the offer of lost pay resulting from the AWOL charges constituted full relief for the alleged discrimination; this relief was offered to Merriell on May 17, 1988.

On June 6, 1988, Merriell refused the offer, and countered that she was entitled to a promotion to GS-6, retroactive to October 1983, restoration of two weeks of sick leave or monetary compensation therefor, reimbursement of \$200 for medical costs, and \$1,500 in damages for mental anguish. On August 25, 1988, the

Secretary issued a final decision cancelling Merriell's complaint for failure to accept an offer of full relief. Merriell appealed to the EEOC, which vacated the cancellation decision on March 10, 1989, and again remanded the complaint for further processing.

On October 5, 1990, the Agency again offered to settle Merriell's complaint by restoring two weeks sick leave, expunging from her personnel records any disciplinary actions and derogatory information, and writing her a letter reinforcing the Agency's Human Relations Policy and intent to comply with its personnel policies on "Freedom from Reprisal". Merriell rejected the Agency's offer on October 19, 1990, stating that "[a] reasonable offer would include a retroactive GS-6 position". On November 5, 1990, the Agency recommended to the Secretary that he issue a finding of no discrimination, and proposed that no further action be taken; that proposed disposition was forwarded to Merriell on December 12.

On January 3, 1991, Merriell requested a hearing before the EEOC. On January 29, the Secretary requested that the EEOC assign an administrative law judge to conduct a hearing on Merriell's complaint. That May, the administrative law judge ruled that Merriell had not alleged in her complaint that she was denied a promotion, but had merely requested a promotion as a means of resolving her complaint through a settlement agreement.

On July 15, 1991, the Agency proposed offering Merriell, as full relief, two hours pay for the time she was charged as AWOL, restoration of two weeks sick leave for time taken as a result of

the alleged discrimination, a letter reinforcing the Agency's intent to comply with its Human Relations Policy, and expungement of any derogatory information or disciplinary action in her personnel records. On August 9, 1991, the Director of the Departmental Office of Civil Rights certified that the offer constituted full relief for the alleged discrimination. The offer was sent to Merriell on August 27, and she refused it on September 20, 1991.

On March 12, 1992, Merriell's complaint was cancelled on the basis of her refusal to accept the Agency's offer of full relief. That April, Merriell filed suit under Title VII of the Civil Rights Act. The Secretary moved to dismiss her complaint on the grounds that (1) she had not exhausted her administrative remedies with respect to some of the claims, and (2) the claims as to which administrative remedies had been exhausted were not timely presented. The magistrate judge issued a report recommending that the motion be granted with respect to the unexhausted claims, and denied with respect to the exhausted claims. The district court overruled Merriell's objections, and adopted the magistrate judge's recommendation, dismissing Merriell's unexhausted claims without prejudice.

The Secretary then moved for dismissal or summary judgment on Merriell's remaining claims. On August 25, 1993, the magistrate judge recommended that summary judgment be granted, on the ground that Merriell's refusal of an offer of full relief precluded her from litigating her claims. Merriell did not object to the

magistrate judge's report, and the district court entered an order on September 24, 1993, adopting the magistrate judge's recommendation.

II.

In an extremely conclusory and inadequate brief, Merriell contends that she "exercised her Right, as a member of a 'Protected Class', and opposed the unfair and unlawful treatment by the Agency"; that her "allegations were based on Retaliatory Actions from her supervisor and later from the Agency (who is responsible for, and should be held accountable for upholding the Law)"; that she "is entitled to 'Due Process' that has been denied throughout this case for the past ten years"; that she "has earned the Right to a fair Trial by an Unbiased body/party (Court of Law)"; that she "is entitled to 'Equitable Relief' if it is proven that Discrimination did in fact occur"; and that her "case is unique/extraordinary ... and may serve as a justification for further acts of the same kind, and thus 'sets precedence [*sic*]'".

Merriell's contentions are frivolous. She does not contend that the district court erred in granting summary judgment dismissing, without prejudice, certain of her claims for failure to exhaust administrative remedies,³ or that it erred in granting summary judgment on her remaining claims on the ground that she

³ See *Porter v. Adams*, 639 F.2d 273, 276 (5th Cir. 1981) ("[t]he exhaustion requirement ... is an absolute prerequisite to suit" under Title VII by federal employees).

refused to accept an offer of full relief.⁴ Indeed, the issues she raises are wholly unresponsive to the rulings by the district court.⁵

Merriell does not state any basis for her conclusional assertion that she has been denied due process. Although she asserts that the "Agency wilfully prolonged proceedings; disregarded deadline dates; failed to comply with EEOC Directives; and erroneously canceled the complaint in order to discourage [her]", she does not contend that the mandatory requirement that federal employees exhaust administrative remedies before bringing a Title VII action in federal court, see **Porter v. Adams**, 639 F.2d 273 (5th Cir. 1981), violates due process. Moreover, her assertions are not supported by the record.

Because Merriell does not contend that the district court erred in granting summary judgment on the grounds it relied on, her contentions that she is entitled to a trial and to equitable relief are also frivolous. Needless to say, one of the purposes of the summary judgment procedure is to obviate the necessity for trial in cases in which there are no disputed issues of material fact and

⁴ See **Wrenn v. Secretary, Department of Veterans Affairs**, 918 F.2d 1073, 1078 (2d Cir. 1990), *cert. denied*, 499 U.S. 977 (1991) ("a claimant who is offered full relief in the administrative process must either accept the relief offered or abandon the claim").

⁵ Among other deficiencies, Merriell's brief contains no references to the record, contrary to Fed. R. App. P. 28(a)(4) and 28(e). See **Moore v. FDIC**, 993 F.2d 106, 107 (5th Cir. 1993) (dismissing appeal because appellants' brief contained only conclusions without references to the record and did not acceptably present issues).

the moving party is entitled to judgment as a matter of law. See, e.g., *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1) ("Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed `to secure the just, speedy and inexpensive determination of every action'"); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Advisory Committee Note to 1963 Amendment of Fed. R. Civ. P. 56(e)) ("purpose of summary judgment is to `pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial'").

III.

For the foregoing reasons, the appeal is

DISMISSED.