

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

Nos. 93-7415, 93-7417

(Summary Calendar)

LEOPOLD LEE PEDRAZA,

Plaintiff-Appellant,

versus

DALTON G. MEYER, ET AL.,

Defendants-Appellees.

LEOPOLD LEE PEDRAZA,

Plaintiff-Appellee,

versus

ALICE LEE, District Clerk,
Victoria Country, Texas,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA V 89 8 & 91 CV 60)

(April 1, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Plaintiff Leopold Lee Pedraza, a former inmate in the Texas Department of Criminal Justice, appeals from the decisions of the district court dismissing without prejudice his causes of action brought pursuant to 42 U.S.C. § 1983. Finding that the district court abused its discretion by dismissing Pedraza's claims, we reverse and remand.

Pedraza was released from prison in March 1993. In June, the district court concluded that Pedraza was "lacking in due diligence" because he "was released from prison . . . and has failed to keep the court advised of his current address." The district court then dismissed Pedraza's actions without prejudice pursuant to Fed. R. Civ. P. 41(b). Because these cases were filed over two years from the date of the incidents of which Pedraza complains, however, the Texas two year statute of limitations would preclude Pedraza from reasserting his claims. See *Burrell v. Newsome*, 883 F.2d 416, 418 (5th Cir. 1989). Consequently, we must treat the dismissal of Pedraza's cases as a dismissal with prejudice. See *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992). We review such a dismissal using the abuse of discretion standard. *Id.* Because "[a] dismissal with prejudice is an extreme sanction that deprives the litigant of the opportunity to pursue his claim, . . . [w]e will affirm dismissals with prejudice . . . only when (1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) the district court has expressly determined that lesser sanctions would not prompt

diligent prosecution" *Id.* (footnote and internal quotation omitted).

Here, Pedraza's failure to inform the district court of his current address does not amount to a clear record of delay or contumacious conduct. Moreover, there is no evidence indicating that the district court determined that lesser sanctions would be appropriate. Consequently, we hold that the district court abused its discretion by involuntarily dismissing Pedraza's actions.

For the foregoing reasons, we REVERSE the judgment of the district court and REMAND for further proceedings.