

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20701
Conference Calendar

DANIEL JOHNSON,

Plaintiff-Appellant,

versus

W. J. ESTELLE, JR., ET AL.,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. 94-20701
- - - - -

March 21, 1995

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Daniel Johnson argues that the district court abused its discretion by denying his motion for substitute counsel after his court-appointed attorney was permitted to withdraw. The denial of a motion for appointment of counsel in a civil rights case, 42 U.S.C. § 1983, is immediately appealable. Robbins v. Maggio, 750 F.2d 405, 412 (5th Cir. 1985). There is no automatic right to appointment of counsel in a civil rights case. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The district

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

court has the discretion to appoint counsel if doing so would advance the proper administration of justice. Id.; 28 U.S.C. § 1915(d). To determine whether appointment of counsel is proper the district court should consider the type and complexity of the case; whether the indigent was capable of adequately presenting the case; whether the indigent was in the position to investigate the case adequately; and whether the evidence would consist in large part of conflicting testimony requiring skill in the presentation of evidence and in cross examination. Ulmer, 691 F.2d at 213. This court reviews the order denying appointment of counsel for an abuse of discretion. Robbins, 750 F.2d at 413.

The issues in this case are not novel or complex; they have been briefed and analyzed in many cases. See Jackson v. Dallas Police Dep't, 811 F.2d 260, 263 (5th Cir. 1987). Additionally, Johnson has demonstrated his ability to present his case over the past ten years, and has successfully appealed to this court twice. The record demonstrates that most of the documents filed on behalf of Johnson have been filed while he was proceeding pro se. Johnson has not demonstrated that this case is so exceptional as to require the appointment of counsel, and the district court did not abuse its discretion by denying the motion. See Ulmer, 691 F.2d at 612-13.

AFFIRMED.