

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30235
Conference Calendar

GLORIA JEAN GATES,

Plaintiff-Appellant,

versus

JOHNNIE W. JONES, JR., Warden,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA 94-134-A-M1
- - - - -

(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Gloria Jean Gates's motion for leave to proceed IFP is hereby GRANTED. Her motion for leave to supplement her brief and the record also is hereby GRANTED.

This Court "will not ordinarily enlarge the record on appeal to include material not before the district court." *U.S. v. Flores*, 887 F.2d 543, 546 (5th Cir. 1989); see *Leonard v. Dixie Well Serv. & Supply Inc.*, 828 F.2d 291, 296 (5th Cir. 1987).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Gates did not present her evidence regarding the district court's past practices, her correspondence with prison officials, or her account withdrawals and payment of fees to the district court. That evidence, however, appears to lend credence to Gates's contentions that the fee might have been paid and that she had relied on the district court's past practices. We therefore allow Gates to supplement the record on appeal to include that evidence. Because the evidence appears to lend credence to her contentions, we allow Gates to supplement her appeal brief to include her allegation that prison officials withdrew \$5 from her account to pay the filing fee.

A district court may impose a partial filing fee on a litigant who is unable to pay a full filing fee. This Court reviews the dismissal of a complaint for failing to pay a partial filing fee for abuse of discretion. *Smith v. Martinez*, 706 F.2d 572, 573-74 (5th Cir. 1983).

The record that was before the district court at the time of dismissal indicates that Gates did not pay the \$4 partial filing fee. That record, standing alone, does not indicate an abuse of discretion. The appellate record, as supplemented, however, may support Gates's contentions that the fee was paid or that she had relied on the district court's past practices.

We will not determine whether prison officials paid the fee or whether Gates justifiably may have relied on the district court's prior notices that she need do nothing to ensure payment of filing fees. Resolution of those contentions would require factual determinations by this Court. This Court, however, will

not make factual findings necessary to decide issues presented for the first time on appeal. *U.S. v. Garcia-Pillado*, 898 F.2d 36, 39 (5th Cir. 1990). We therefore vacate the district court's dismissal and remand Gates's case for further proceedings.

VACATED and REMANDED.