

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40653  
Conference Calendar

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RICHARD C. LOPEZ,

Plaintiff-Appellant,

versus

CYNTHIA TACY, Clerk-3, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:93-CV-75  
- - - - -

(January 24, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,  
Circuit Judges.

PER CURIAM:\*

Richard C. Lopez, a prisoner in the Eastham Unit of the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID), filed a civil rights complaint under 42 U.S.C. § 1983 alleging that prison mailroom officials denied him his fingerprint card without a legitimate penological reason. The district court granted summary judgment in favor of the defendants on January 27, 1994. On May 17, 1994, Lopez filed a motion for relief from final judgment under Fed. R. Civ. P.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

60(b). The district court denied this motion. It is from this denial that Lopez appeals.

"`Motions under Rule 60(b) are directed to the sound discretion of the district court and its denial of relief upon such motion will be set aside on appeal only for abuse of that discretion.'" Carimi v. Royal Caribbean Line, Inc., 959 F.2d 1344, 1345 (5th Cir. 1992) (quoting Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981)). Under this standard, "[i]t is not enough that the granting of relief might have been permissible or even warranted - denial must have been so unwarranted as to constitute an abuse of discretion." Seven Elves, 635 F.2d at 402.

Lopez asserted that an affidavit supporting the motion for summary judgment was false because a disposition form showed that the fingerprint card was to be destroyed on April 30, 1993. The district court reasoned that the fingerprint card could not have been destroyed on April 30, 1993, because a copy of it was attached to the defendants' motion from summary judgment submitted on September 27, 1993. The district court had given its consideration to Lopez's assertions of perjury prior to granting summary judgment in the defendants favor and it was not an abuse of discretion to decline to revisit the issue over four months later because Lopez submitted his own affidavit.

AFFIRMED.