

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50690  
Conference Calendar

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REGINALD I. BAILEY,  
a/k/a Ray Hill,

Plaintiff-Appellant,

versus

NICHOLAS & BARRERA LAW FIRM, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-93-CA-707  
- - - - -

(January 24, 1995)

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

PER CURIAM:\*

Reginald I. Bailey filed a civil rights action pursuant to 42 U.S.C. § 1983. The district court dismissed the case as frivolous pursuant to 28 U.S.C. § 1915(d). Bailey's appeal was dismissed under 5th Cir. Rule 42.3 for failure to file an appellate brief. Bailey v. Nicholas & Barrera Law Firm, No. 94-50249 (5th Cir., June 28, 1994) (unpublished). Following the dismissal of his appeal, Bailey filed five motions regarding the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

case. In two separate orders, the district court dismissed all of these motions because this Court had dismissed his appeal.

All of Bailey's motions filed following the dismissal of his appeal by this Court will be liberally construed as motions for relief from judgment under Fed. R. Civ. P. 60(b). See Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972). With respect to the first four motions, Bailey has not timely filed a notice of appeal from their dismissal. See Fed. R. App. P. 4(a).

"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. There is nothing in the fifth motion that would require the district court to have overturned its finding that Bailey's suit was frivolous under § 1915(d). This appeal is without arguable merit and thus, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

APPEAL DISMISSED. See 5th Cir. Rule 42.2.