

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 95-31265
Summary Calendar

JOHNNY B. DRUMMOND; JOYCELYN HAGAN;
MARION FRANCIS; OZINE HAGAN; VANDER J. SAPP;
JUANITA CAITON; NATHAN TURNER; ROY JACKSON;
JAMES DARBY, JR.; FREDDY LAWRENCE; RICHARD ALLEN;
JUDY M. DEBOSE; LEROY SMITH; WILBERINE NELSON,

Plaintiffs-Appellants,

VERSUS

UNITED STATES DEPARTMENT OF THE ARMY,
Togo D. West, Secretary,

Defendant-Appellee.

Appeal from the United States District Court
For the Eastern District of Louisiana
(94-CV-3873-A)

May 27, 1996

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:*

Johnny B. Drummond, et al. (the plaintiffs) filed this Title VII class action on December 5, 1994, against the defendant,

* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Secretary of the Army. In lieu of an answer, the Secretary of the Army filed a motion to dismiss or for summary judgment because plaintiffs did not file their lawsuit within the requisite time after their attorney received the final decision from the Equal Employment Opportunity Commission - Office of Federal Operations (EEOC - OFO). The envelop containing this final decision was sent by certified mail and received on August 31, 1994, by an employee of the law firm from whom plaintiffs' counsel rented office space. After receipt, the letter was left in the customary place in the office copy room where plaintiffs' counsel picked up his mail. However, plaintiffs' counsel was out of town and he did not "personally" pick up the certified letter until he returned to his office on September 6, 1994. The district court granted the motion to dismiss of the Secretary of the Army because this suit was not filed within the 90-day period specified by 42 U.S.C. § 2000e-16(c).

We have carefully reviewed the briefs, the record excerpts and relevant portions of the record itself. For the reasons stated by the district court in its "Order Granting Motion for Reconsideration" under date of November 8, 1995, we AFFIRM the judgment entered under date of November 14, 1995, dismissing plaintiffs' claims with prejudice.

AFFIRMED.