

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-40718  
Summary Calendar

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JESSE RAY MILES, JR.,

Plaintiff-Appellant,

versus

ROGER WEST ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:95-CV-90  
- - - - -

July 17, 1996

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Jesse Ray Miles, Jr., TDCJ No. 638526, appeals the dismissal with prejudice of his 42 U.S.C. § 1983 action following a bench trial conducted by the magistrate judge. The magistrate judge did not err by entering a dismissal with prejudice in this action instead of a dismissal without prejudice. See Baris v. Sulpicio Lines, Inc., 74 F.3d 567, (5th Cir. 1996). Since Miles received a bench trial, the magistrate judge obviously construed Miles' pleadings to state a claim against the defendants.

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

The magistrate judge did not err by refusing to appoint counsel for Miles. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). Because Miles participated in the bench trial without objecting and reminding the magistrate judge of his jury request, he is barred from raising the issue on appeal. Matter of Wynn, 889 F.2d 644, 646 (5th Cir. 1989). The defendants did not violate Miles' due process rights by placing him into solitary confinement for two months. See Sandin v. Conner, 115 S. Ct. 2293, 2300 (1995). Miles' appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.

We warn Miles that the filing of future frivolous appeals will result in sanctions. E.g., Smith v. McCleod, 946 F.2d 417, 418 (5th Cir. 1991); Jackson v. Carpenter, 921 F.2d 68, 69 (5th Cir. 1991). If Miles has any other appeals pending in this court at this time, he should review them in light of the foregoing warning and move to withdraw any appeal that is frivolous.

APPEAL DISMISSED; SANCTION WARNING ISSUED.