

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10043
Conference Calendar

EUGENE IVORY HENTON,

Plaintiff-Appellant,

versus

DENNISE FREDERICK, Classification Officer
Tarrant County Sheriff's Department,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:95-CV-239-A
- - - - -

June 26, 1996

Before HIGGINBOTHAM, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Eugene Ivory Henton, (#0180336), argues that the summary judgment for the defendant was improper and that the district court should not have denied a motion for continuance, construed as a motion brought pursuant to Fed. R. Civ. P. 60(b). Henton noticed an appeal from the denial of the motion but not from the summary judgment.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Henton may not now challenge the summary judgment because the denial of a Rule 60(b) motion does not bring up the underlying judgment for review. In re Ta Chi Navigation (Panama) Corp. S.A., 728 F.2d 699, 703 (5th Cir. 1984). As to the denial of his Rule 60(b) motion, we have reviewed the record and Henton's brief and AFFIRM the district court's denial for essentially the same reasons set forth by the district court. Henton v. Frederick, No. 4:95-CV-239-A (N.D. Tex. Jan. 4, 1996). Henton's motion to amend his complaint is denied.

AFFIRMED; MOTION DENIED.