

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

---

No. 96-10417

(Summary Calendar)

---

HARRY DEAN HAYNES,

Plaintiff - Appellant,

versus

WAYNE SCOTT, Director, Texas Dep't of Criminal  
Justice, Institutional Division; RAYMOND  
VILLARREAL; CANALAS, LVN,

Defendants - Appellees.

---

Appeal from the United States District Court  
For the Northern District of Texas  
(5:95-CV-183-BA)

---

November 21, 1997

Before WIENER, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

IT IS ORDERED that the motion by Harry Dean Haynes for reinstatement of his appeal is GRANTED. IT IS ALSO ORDERED that Haynes' motion for leave to proceed on appeal *in forma pauperis* is GRANTED. See *Haynes v. Scott*, 116 F.3d 137, 140 (5th Cir. 1997).

---

\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Haynes argues that the magistrate judge lacked jurisdiction to enter final judgment. In light of Haynes' written consent to proceed to judgment before the magistrate judge, the magistrate judge had jurisdiction. See *Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995).

Haynes argues that the magistrate judge abused his discretion by dismissing Haynes' suit with prejudice for want of prosecution. There is indication in the record that the clerk of the court's office had Haynes' then-current address, although his change-of-address letter was not filed in the case. Moreover, there is nothing in the record indicating that the magistrate judge considered a lesser sanction before dismissing with prejudice. Under these circumstances, the magistrate abused his discretion by dismissing Haynes' suit with prejudice for want of prosecution. See *McNeal v. Papasan*, 842 F.2d 787, 789-93 (5th Cir. 1988).

For the foregoing reasons, the judgment is VACATED and the case is REMANDED for further proceedings consistent with this opinion.