

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-41168
Summary Calendar

TERRY PRESTON MILLER,

Plaintiff-Appellant,

versus

DAVID FORREST, MAJOR; BOBBY LANE, MAJOR;
A. J. JINKINS, DOCTOR; KENNETH SULEWSKI, CAPTAIN,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:96-CV-271
- - - - -

December 11, 1997

Before WISDOM, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Terry Preston Miller filed an action under § 1983 against several employees of the Texas Department of Criminal Justice. The district court dismissed the claim without prejudice because Miller failed to exhaust administrative remedies prior to seeking relief in the district court. Miller appeals.

After the district court entered final judgment, Miller introduced additional evidence of administrative exhaustion into

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the record. Because the district court reached the proper conclusion based on the evidence it was able to consider, we affirm the dismissal without prejudice. See 42 U.S.C. § 1997e(a); Kemlon Prod. & Dev. Co. v. United States, 646 F.2d 223, 224 (5th Cir. 1981). Miller is free to refile his complaint with consolidated evidence of administrative exhaustion.

AFFIRMED.