

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 97-20406  
Summary Calendar

---

JOHN W. WINSLOW,

Plaintiff-Appellant,

versus

CHARLES SMITH; ET AL.,

Defendants,

CHARLES SMITH; LINDA PATTERSON;  
S. O. WOODS; M. COUNTZ, Warden;  
R. BELANGER, Asst. Warden;  
R. JONES, Asst. Warden;  
L. HEUSZEL, Asst. Warden;  
G. PIERSON, Asst. Warden;  
H. TERRY, Asst. Warden,

Defendants-Appellees.

- - - - -  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-94-CV-1777  
- - - - -

October 31, 1997

Before KING, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:\*

John W. Winslow, Texas prisoner # 442811, appeals from the district court's grant of summary judgment as unopposed and

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismissing his 42 U.S.C. § 1983 complaint for lack of prosecution. Winslow argues that the defendants intentionally used the disciplinary process to prevent him from filing a timely response to the summary judgment motion.

Even if his allegations are true, Winslow has not shown prejudice because he was able to respond to the defendants' summary judgment motion. Lewis v. Casey, 116 S. Ct. 2174, 2180 (1996). Although the district court erred in granting summary judgment on the basis that Winslow had not responded to the summary judgment motion, the grant of summary judgment was appropriate. Sojourner T. v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992) (permitting affirmance of judgment on any basis supported by the record). The defendants met their initial burden of showing that they were entitled to judgment, and Winslow's conclusional allegations and unsubstantiated assertions failed to carry his burden of showing that they were not entitled to judgment. Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc).

AFFIRMED.