

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50887
Summary Calendar

JOSE M. RAMIREZ,

Plaintiff-Appellant,

versus

JOE AGUIRRE, Warden; OFFICERS
AND MEDICAL STAFF - FPC EL PASO,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-97-CV-2
- - - - -

April 20, 1998

Before DUHE', DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Jose R. Ramirez, federal prisoner No. 04204-070, appeals the district court's denial of his post-judgment motion requesting relief from the district court's order granting summary judgment for the defendants in a Bivens** action. Ramirez filed several pleadings after judgment was entered in the district court. There is some ambiguity as to whether any of these documents may be construed as a timely-filed rule 59(e) motion or whether the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

pleadings are more properly construed as Rule 60(b) motions. Unlike Rule 59(e) motions, Rule 60(b) motions do not bring up the underlying judgment and are reviewed for abuse of discretion. Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6, 8 (5th Cir. 1991). Furthermore, Ramirez maintained that he did not timely receive the district court's judgment, thus possibly making his notice of appeal timely as to the underlying judgment.

The court need not resolve this ambiguity as, under either the Rule 60(b) standard or the more lenient direct review of the initial judgment, Ramirez cannot prevail. The district court based its summary judgment determination on Ramirez's failure to exhaust administrative remedies. Ramirez failed to brief this issue in his initial appellate brief and has thus abandoned it. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993) (Although pro se pleadings must be liberally construed, arguments not briefed on appeal are deemed abandoned). Nor did he present his evidence to the district court, and therefore we cannot consider it. See Trinity Industries, Inc. v. Martin, 963 F.2d 795, 799 (5th Cir. 1992)(citing Kemlon Prods. & Dev. Co. v. United States, 646 F.2d 223, 224 (5th Cir. 1981)).

The judgment is hereby amended to be without prejudice to allow Ramirez to exhaust his administrative remedies.

AFFIRMED.