

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 98-40691  
Summary Calendar

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RODNEY LEE WOODS,

Plaintiff-Appellant,

versus

J. JOHNNY GONZALES ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. G-96-CV-399

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March 16, 1999

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Rodney Lee Woods, Texas state prisoner # 627825, appeals from the district court's dismissal without prejudice of his civil rights complaint for failure to obey a court order. A district court may *sua sponte* dismiss an action for failure to prosecute or to comply with any court order. *See* FED. R. CIV. P. 41(b); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5<sup>th</sup> Cir. 1988). A *sua sponte* dismissal by the district court is reviewed for abuse of discretion. *See McCullough*, 835 F.2d at 1127.

Because of the operation of the statute of limitations, the dismissal would operate as a dismissal with prejudice of some of Woods' claims. *See Long v. Simmons*, 77 F.3d 878, 880 (5<sup>th</sup> Cir. 1996). A dismissal with prejudice "is such a severe sanction that it is to be used only in extreme

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5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

circumstances . . . In the past, we have found that lesser sanctions would suffice in all but the most flagrant circumstances.” *Burden v. Yates*, 644 F.2d 503, 505 (5<sup>th</sup> Cir. Unit B May 1981). Although dismissal with prejudice is a discretionary matter, we have “generally permitted it only in the face of a clear record of delay or contumacious conduct by the plaintiff.” *Colle v. Brazos County, Tex.*, 981 F.2d 237, 243 (5<sup>th</sup> Cir. 1993). Because there is no clear record of delay or contumacious conduct by Woods, and because the district court did not employ lesser sanctions before dismissing the action, the district court abused its discretion in dismissing the complaint. *See id.*

VACATED AND REMANDED.