

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-60336  
Conference Calendar

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HARVEY DEAN HOLMES,

Plaintiff-Appellant,

versus

GREGORY PARK,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 2:98-CV-214-B  
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December 16, 1999

Before JOLLY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Harvey Dean Holmes, prisoner # 10599-042, seeks to appeal the dismissal of his civil action for damages against Gregory Park, the Federal Public Defender who represented him in his criminal proceedings.

We must examine the basis of our jurisdiction, *sua sponte*, if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

1987). Holmes filed a notice of appeal from a final judgment entered by a magistrate judge. A magistrate judge's authority to act on civil matters is described in 28 U.S.C. § 636. In a case in which the parties have not consented to proceed before the magistrate judge, a magistrate judge may determine pretrial matters, conduct evidentiary hearings, and file proposed findings and recommendations. Jones v. Johnson, 134 F.3d 309, 310 (5th Cir. 1998); 28 U.S.C. § 636(b)(1)(A-C). This case was never referred to the magistrate judge pursuant to 28 U.S.C. § 636(b)(1). There was no consent to proceed before the magistrate judge pursuant to § 636(c). There is nothing in the record to indicate by what authority the magistrate judge dismissed this civil action for damages. The case never went before a federal district court judge at any time. The magistrate judge's judgment is not a final appealable judgment. Trufant v. Autocon, Inc., 729 F.2d 308, 309 (5th Cir. 1984).

We are without jurisdiction to consider this case. The appeal is dismissed for lack of jurisdiction.

APPEAL DISMISSED.