UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-2693
Summary Calendar

RORY KEITH JONES,

Plaintiff-Appellant,

versus

BRAQUE WILSON, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
(CA-H-87-0759)

(June 15, 1993)

Before POLITZ, Chief Judge, KING and BARKSDALE, Circuit Judges.

PER CURIAM:*

Rory Keith Jones appeals the dismissal with prejudice of his civil rights action for failure to prosecute. Finding no abuse of discretion in the dismissal, we affirm.

Background

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

On November 3, 1982 Texas authorities arrested Jones on four counts of aggravated robbery. Jones entered a *nolo contendere* plea and was sentenced to 45 years imprisonment. The conviction was affirmed on appeal. Proceeding *pro se* and *in forma pauperis*, he then invoked 42 U.S.C. § 1983, seeking damages in the amount of $36 million, alleging that Braque Wilson, the investigating probation officer, and Robert A. Jones, his trial attorney, conspired to induce his plea by erroneously convincing him of his eligibility for parole. The complaint further alleged that Randy McDonald, his attorney on appeal, denied him effective assistance of counsel by filing an **Anders**[1] brief. After a **Spears**[2] hearing, the district court stayed the action pending exhaustion of habeas corpus remedies, and ordered Jones to advise as to the status of those proceedings at 60-day intervals.

After Jones exhausted his habeas corpus remedies, the district court appointed counsel and entered a scheduling order for pretrial proceedings. In July 1990, Jones moved for amendment of the scheduling order and pretrial conference date. The district court, in September 1991, ordered Jones to confer with opposing counsel to reach agreement as to a new pretrial schedule and, failing an agreement, to move for a pretrial conference. Thereafter, however, Jones did nothing. Nearly two years later, the district court ordered Jones to show cause why his action should not be dismissed

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[1] **Anders v. California**, 386 U.S. 738 (1967).

[2] **Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

for failure to prosecute, and on July 29, 1992 dismissed the action with prejudice. Jones filed a *pro se* notice of appeal. In his appellate brief, appointed counsel states that he permitted dismissal of this action only after a conference following which he -- apparently in error -- understood that Jones no longer wished to press his claims.[3]

Analysis

We review dismissals for failure to prosecute only for abuse of discretion.[4] Recognizing the drastic nature of such a dismissal, when with prejudice, we have "generally permitted it only in the face of a clear record of delay or contumacious conduct by the plaintiff."[5] In view of Jones's noncompliance with the district court's September 1990 order, the two-year period during which he took no action in pursuit of his claims, the absence in the record of any justification for this delay, and Jones's failure to invite our attention to any factual basis[6] or authority

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[3] During this conference, counsel apparently informed Jones that, in his opinion, this action lacked merit.

[4] E.g., **Colle v. Brazos County, Texas**, 981 F.2d 237 (5th Cir. 1993).

[5] **Id.** (quoting **Durham v. Florida East Coast R. Co.**, 385 F.2d 366, 367 (5th Cir. 1967)).

[6] Jones suggests that because a misunderstanding with his attorney resulted in failure to oppose dismissal, we should set aside the district court's action. No evidence in the record, however, indicates the existence of such a misunderstanding, and in any event, any misunderstanding regarding opposition to dismissal

indicating that the district court erred,[7] we find no abuse of discretion in the district court's action.

AFFIRMED.

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fails to explain the long delay which led to the order to show cause.

[7] Jones suggests that the district court should not have dismissed his action without conducting a pretrial hearing which he requested. We initially note that Jones never requested such a hearing. Rather, the motion to which he refers in his brief requested postponement of any pretrial conference until at least February 1991. The district court's subsequent order required a further motion by Jones to obtain such a hearing. In any event, Jones's argument fails to address the sole issue presented by this appeal -- whether his inaction justified the dismissal in this case.