

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7259  
Summary Calendar  
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WILLIE SMITH,

Plaintiff-Appellant,

versus

WILLARD THOMAS, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Northern District of Mississippi  
(4:92-CV-006-D-D)  
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(July 14, 1994)

Before GARWOOD, SMITH and BARKSDALE, Circuit Judges.\*

PER CURIAM:

Plaintiff-appellant Willie Smith (Smith), a prisoner in the Mississippi Department of Corrections, instituted this suit under 42 U.S.C. § 1983 *pro se* and *in forma pauperis* against seven prison officials. The district court dismissed the suit as frivolous under 28 U.S.C. § 1915(d). Although a hearing was held under

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

*Spears v. McCotter*, 766 F.2d 179, 181 (5th Cir. 1985), it was rather truncated, possibly because the magistrate judge decided not to recommend section 1915(d) dismissal as to one defendant. Neither the facts nor the law are sufficiently clear to establish that Smith unarguably has no claim that his due process rights were violated by *punishment* without any prior process whatever. See, e.g., *Mitchell v. Sheriff Dept., Lubbock County, Texas*, 995 F.2d 60 (5th Cir. 1993); *Cooper v. Sheriff, Lubbock County, Texas*, 929 F.2d 1078, 1083-84 (5th Cir. 1991). Accordingly, dismissal under section 1915(d) was inappropriate. We do not suggest that with further development dismissal prior to trial (as by summary judgment) would necessarily be inappropriate; we only say that the dismissal on this record under section 1915(d) was not authorized.

Accordingly, the district court's judgment is VACATED and the cause is REMANDED.