

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8836  
Conference Calendar

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WILLIE CLARK, JR.,

Petitioner-Appellant,

versus

BUREAU OF FEDERAL PRISONS  
ET AL.,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-93-CV-416  
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

IT IS ORDERED that the motion for summary judgment is  
DISMISSED. It is not the function of an appellate court to rule  
on such a motion. See Fed. R. Civ. P. 1, 56.

Willie Clark, Jr., attempts to argue the merits of his  
petition for writ of habeas corpus. Because the district court  
dismissed the petition for failure to prosecute, pursuant to Fed.  
R. Civ. P. 41(b), the only issue before this Court is whether the  
district court abused its discretion in dismissing without

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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that this opinion should not be published.

prejudice. See McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988).

Clark's reasons for failing to comply with the order to file answers to the magistrate judge's questionnaire were never brought to the attention of the district court. Therefore, this Court will not address the merits of these arguments, presented for the first time on appeal. See United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990). The magistrate judge gave Clark three extensions in which to file his answers, along with giving Clark sufficient warning of the possible consequences of failure to file. Moreover, the magistrate judge, in his report and recommendation adopted by the district court, thoroughly analyzed the propriety of the chosen sanction. In light of this record, the district court did not abuse its discretion in dismissing without prejudice pursuant to Rule 41(b).

AFFIRMED.