

October 14, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-60035
Summary Calendar

KAREN GRAY,

Plaintiff-Appellant,

versus

DAVID M. HARAWAY, PhD, Individually; MARILYN BATEMAN,
Individually; NORTHWEST MISSISSIPPI COMMUNITY COLLEGE,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 2:02-CV-238-P

Before DAVIS, SMITH, and DENNIS, Circuit Judges

PER CURIAM:*

Karen Gray appeals the district court's order granting the defendants' motion for summary judgment and dismissing her 42 U.S.C. § 1983 complaint. Gray argues that she was terminated from her job, in which she had a Fourteenth Amendment property interest, without due process of law. Gray alleges that she was denied pre-termination process and a post-termination hearing.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gray's allegations regarding the denial of pre-termination process are raised for the first time on appeal. Accordingly, they will not be considered by this court. See Forbush v. J.C. Penney Co., 98 F.3d 817, 822 (5th Cir. 1996); Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). The record reflects that Gray failed to utilize the grievance procedure that was available to her following her termination. The evidence does not support her contention that requiring her to utilize the grievance procedure would have been futile. Accordingly, Gray's due process rights were not violated. See Rathjen v. Litchfield, 878 F.2d 836, 838 (5th Cir. 1989). The judgment of the district court is AFFIRMED.