

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3831  
Summary Calendar

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SIDNEY KIRK MOSES,

Plaintiff-Appellant,

versus

CHARLES C. FOTI, JR., Sheriff,  
Orleans Parish,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA-93-2488-A)

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(May 18, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Appellant Sidney Kirk Moses represented to Magistrate Judge Africk that he was willing voluntarily to dismiss this § 1983 prisoner lawsuit and re-file it in state court. The case was accordingly dismissed without prejudice.

Twenty days after the dismissal, Kirk filed a notice of appeal asserting that he did not mean to discontinue his federal

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

lawsuit. His change of heart came too late. In order to seek reconsideration of the court's order, he had to file a motion within ten days under Fed. R. Civ. P. 59. Further, his notice of appeal cannot be construed as a proper Rule 60(b) motion, and even if it were, it does not state grounds for relief under Rule 60(b).

In short, there is no relief for the dismissal that was entered. But Kirk should not be concerned. A dismissal without prejudice carries no adverse legal consequences for this allegedly continuing violation of his rights.

AFFIRMED.