

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40783
Summary Calendar

CALVIN RAY HYDER,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION;
WAYNE SCOTT, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-96-CV-175
- - - - -

April 11, 1997

Before SMITH, DUHE' and BARKSDALE, Circuit Judges.

PER CURIAM:*

Calvin Ray Hyder's, Texas prisoner # 458495, motion to proceed in forma pauperis on appeal is GRANTED. We assess no initial partial filing fee; however, we direct the agency having custody of Hyder to forward payments from his account to the clerk of the district court each time the amount in his account

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

exceeds \$10 until the filing fee in the amount of \$105 is paid.
See 28 U.S.C. § 1915(b)(2) and (4).

Our review of the briefs and the record lead us to conclude that the district court did not abuse its discretion in dismissing Hyder's civil rights action with prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Further, Hyder's appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.