

May 22, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60274
Summary Calendar

BENJAMIN JOHNSON,

Plaintiff-Appellant,

v.

VICKI HARE; AUTUMN ZACHARIAS, Bad Check Unit, Office of the
District Attorney; WHBQ TELEVISION, Channel 13,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
No. 2:05-CV-24

Before JOLLY, DAVIS, and OWEN, Circuit Judges.

PER CURIAM:*

Benjamin Johnson, federal prisoner # 19553-076, appeals the district court's dismissal of his 42 U.S.C. § 1983 action without prejudice. The district court based its dismissal on its conclusion that the case could not proceed in an orderly and timely manner because Johnson was incarcerated in another state. Johnson argues that this conclusion is erroneous

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and that the district court's decision impinges on his right to due process and the timely pursuit of his claims.

“Prisoners retain a right of adequate, effective, and meaningful access to the courts.” Roberson v. Hewes, 701 F.2d 418, 420 (5th Cir. 1983). In the absence of a factual basis for concluding that Johnson could not effectively maintain his civil rights action, the district court erred in dismissing it. See id.; Mitchum v. Purvis, 650 F.2d 647, 648 (5th Cir. Unit B July 1981). Accordingly, the judgment of the district court is vacated and the matter is remanded for further proceedings.

VACATED AND REMANDED.