

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-10970  
Conference Calendar

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SHERMAN HARVEY MERRITT, JR.,

Plaintiff-Appellant,

versus

R. O. LAMPERT, SR., Warden; DELAROSA, Major,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:97-CV-183  
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Sherman Harvey Merritt, Jr., Texas state prisoner #764054, appeals the dismissal of his 42 U.S.C. § 1983 lawsuit for failure to pay the partial filing fee. We have reviewed the record and affirm the district court's dismissal of Merritt's complaint. See Gonzalez v. Firestone Tire & Rubber Co., 610 F.2d 241, 247 (5th Cir. 1980). In doing so, we make the observation that the foregoing disposition does not prejudice Merritt because the action has not yet prescribed. Accordingly, we AFFIRM the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court's dismissal without prejudice of Merritt's lawsuit.

AFFIRMED.