

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40032  
Summary Calendar

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ERNEST GUERRA,

Plaintiff-Appellant,

versus

JAMES D. MAYFIELD, Correctional Officer, Michael Unit,

Defendant-Appellee.

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Appeal from the United States District Court for the  
Eastern District of Texas  
(6:95-CV-920)

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August 6, 1997

Before JOLLY, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:\*

Ernest Guerra, # 642307, appeals the dismissal of a pro se prisoner civil rights complaint for failure to exhaust his administrative remedies. The district court indicated that Guerra had failed to exhaust administrative remedies up through his step-

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

three grievance procedure now in place, and Guerra provided, before judgment, some evidence that he had exhausted the two-step procedure. The case is remanded for the district court's determination of whether Guerra timely complied with the court's orders that he exhaust his administrative remedies in light of the elimination of the step-three grievance procedure.

Guerra's motion for appointment of counsel is DENIED without prejudice to his right to reassert it before the district court. His document labeled "motion for an appeal" is misnomered and is in fact an attempt to supplement his brief. The same is unnecessary and not in compliance with our rules, and is ordered stricken from the appellate record.

VACATED and REMANDED.