

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50146
Summary Calendar

MICHAEL LATHUM,

Plaintiff-Appellant,

versus

P. LOPEZ; R. SUTHERLAND,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P-96-CV-59
- - - - -

August 7, 1997

Before JOLLY, BENAVIDES and PARKER, Circuit Judges.

PER CURIAM:*

Michael Lathum, Texas state prisoner #634529, appeals from the district court's dismissal of his civil rights complaint for his failure to comply with a court order. The district court's memorandum opinion states that the dismissal was without prejudice, but the court's final judgment reflects that the dismissal was with prejudice. A dismissal with prejudice is inappropriate because there is no clear record of delay or contumacious conduct by Lathum nor is there a showing in the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

record that the district court considered or employed lesser sanctions. See Berry v. CIGNA/RSI-CIGNA, 975 F.2d 1188, 1190-91 (5th Cir. 1992). If the dismissal was without prejudice, appellate review is impossible because, without a copy of Lathum's complaint, the court is unable to determine whether his claims are barred by the two-year limitations period, and, thus, were effectively dismissed with prejudice. See McNeal v. Papasan, 842 F.2d 787, 793 n.1 (5th Cir. 1988). Additionally, a review of the record shows that Lathum did submit financial documents to the district court. Accordingly, the judgment of the district court is VACATED and the case REMANDED for further proceedings.