

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-51060
Summary Calendar

JOHNNY RAY SEATON

Plaintiff-Appellant,

versus

VICTOR RODRIGUEZ, Chairman,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-97-CV-467

October 23, 1998

Before KING, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Johnny Ray Seaton appeals the dismissal without prejudice of his 42 U.S.C. § 1983 civil rights complaint. (Seaton's motion for appointment of appellate counsel is **DENIED**.) The district court determined that Seaton had failed to comply with a court order, see FED. R. CIV. P. 41(b), that he pay the \$5 initial partial filing fee. Seaton has presented evidence indicating that he authorized the payment of that fee from his inmate trust fund account on 3

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

July 1997, in compliance with Texas Department of Criminal Justice procedures. See **Morrow v. Collins**, 111 F.3d 374, 376 (5th cir. 1997). Under these circumstances, the district court abused its discretion in dismissing the action. See **Smith v. Martinez**, 706 F.2d 572, 573-74 (5th Cir. 1983).

VACATED AND REMANDED; MOTION DENIED