

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

m 99-30728

VERNIE A. MCGEE,

Plaintiff-Appellant,

VERSUS

STATE OF LOUISIANA,
THROUGH THE DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
6:95-CV-930

March 29, 2000

Before DAVIS, CYNTHIA HOLCOMB
HALL,* and SMITH, Circuit Judges.

PER CURIAM:**

Vernie McGee sued his employer under title VII. The district court held that McGee's claims were not timely filed with the Equal Employment Opportunity Commission.

We have reviewed the briefs and pertinent portions of the record and have heard oral argument. We conclude that the charge

questionnaire was adequate to constitute filing and to meet the 300-day requirement, but only as to the second denial of promotion. This is of no benefit to McGee, however, because, on the merits of the claim, there is absolutely nothing in the record to indicate that racial animus or discrimination played any part in McGee's circumstance on the job.

We can affirm on any ground that appears in the record. *See Johnson v. Sawyer*, 120 F.3d 1307, 1316 (5th Cir. 1997). McGee presents no credible evidence beyond his bare and unsupported assertion that he was denied promotion because of race, and defendant has presented persuasive, nondiscriminatory grounds for selecting two other persons who were better qualified. McGee does not respond with evidence or argument of pretext.

* Circuit Judge of the Ninth Circuit, sitting by designation.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

AFFIRMED.