

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 99-40373  
Conference Calendar

---

MICHAEL WAYNE ASKEY,

Plaintiff-Appellant,

versus

TIMOTHY WEST, Warden, Individually & In his Official Capacity; UNKNOWN PERSON SIMPSON, Major, Individually & In his Official Capacity; R. TARVER, Captain, Individually & In his Official Capacity; UNKNOWN PERSON FLAKES, Assistant Warden, Individually & In his Official Capacity; K. PENNY, Lieutenant, Individually & In his Official Capacity; UNKNOWN PERSON PITTMAN, Sergeant, Individually & In his Official Capacity; UNKNOWN PERSON JOHNSON; Lieutenant, Individually & In her Official Capacity; UNKNOWN PERSON SISTRUNK, Correctional Officer, Individually & In his Official Capacity; UNKNOWN PERSON GORSUCH, Sergeant, Individually & In his Official Capacity; S. PENRY, Correctional Officer, Individually & In his Official Capacity; UNKNOWN PERSON PISKE, Correctional Officer, Individually & In his Official Capacity; S. MCBRIDE, Correctional Officer, Individually & In his Official Capacity; K. BEACH, Sergeant, Individually & In his Official Capacity; UNKNOWN PERSON RICHMOND, Correctional Officer, Individually & In his Official Capacity; UNKNOWN PERSON BAMBINO, Correctional Officer, Individually & In his Official Capacity; B. SEWELL, Correctional Officer & In his Official Capacity; UNKNOWN PERSON ALLISON, Correctional Officer & In his Official Capacity; UNKNOWN PERSON BROWN, Correctional Officer, Individually & In his Official Capacity; UNKNOWN PERSON JACK, Correctional Officer, Individually & In his Official Capacity; UNKNOWN PERSON LUCIA, Correctional Officer Individually & In his Official Capacity; UNKNOWN PERSON DEVERAUX, Correctional Officer, Individually & In her Official Capacity; UNKNOWN PERSON STAPLES, Assistant Warden, Individually & In his Official Capacity; UNKNOWN PERSON SHEPPARD, Correctional Officer, Individually & In his Official Capacity; UNKNOWN PERSON ALEXANDER, Correctional Officer, Individually & In his Official Capacity; UNKNOWN PERSON CORDELL, Correctional Officer, Individually & In his Official Capacity; BILLYE FORREST, Captain, Individually & In her Official Capacity,

Defendants-Appellees.

-----  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:98-CV-1663  
-----

June 16, 2000

Before JOLLY, DAVIS, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Michael Wayne Askey ("Askey"), Texas prisoner # 552552, appeals the magistrate judge's denial of his motion for appointment of counsel. "A district court should appoint counsel in a civil rights case only if presented with exceptional circumstances." See Norton v. Dimazana, 122 F.3d 286, 293 (5th Cir. 1997). This court will overturn a district court's decision regarding appointment of counsel only if the appellant shows a clear abuse of discretion. See Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987).

Askey argues that the magistrate judge abused his discretion because: (1) the magistrate judge prematurely decided the motion before first requiring the defendants to answer the complaint; (2) Askey is too sick to represent himself; (3) Askey lacks knowledge of the legal process; and (4) Askey's case will involve the presentation of conflicting testimony. Askey failed to present exceptional circumstances below. This court will not consider his arguments raised for the first time on appeal. The magistrate judge did not abuse its discretion in denying Askey's motion. See Norton, 122 F.3d at 293.

---

\* Pursuant to 5<sup>TH</sup> 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 5<sup>TH</sup> CIR. R. 47.5.4.

AFFIRMED.