

United States Court of Appeals

Fifth Circuit

**FILED**

June 26, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-60123  
Summary Calendar

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THOMAS JOHNSON,

Plaintiff-Appellant,

versus

MISSISSIPPI DEPARTMENT OF CORRECTIONS; ADRIENNE CROFT,  
Correctional Officer Trainee Pin #0913; MARYLEN REECE, "Sho"  
Chairperson,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 4:05-CV-250  
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Before JOLLY, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Thomas Johnson, Mississippi prisoner # K6003, appeals the district court's sua sponte dismissal of his in forma pauperis civil rights complaint on the ground that he failed to exhaust administrative remedies as required by 42 U.S.C. § 1997e(a). Johnson asserted in his complaint that he was prevented from exhausting the Administrative Remedy Program steps by prison officials' failure to pick up his Step 2 grievance in a timely fashion. In dismissing the complaint for failure to exhaust, the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court relied on Johnson's assertion that his administrative appeal was denied as untimely without considering Johnson's stated reasons for such denial.

The Supreme Court recently held "that failure to exhaust is an affirmative defense under the [Prison Litigation Reform Act], and that inmates are not required to specifically plead or demonstrate exhaustion in their complaints." Jones v. Bock, 127 S. Ct. 910, 921 (2007). Accordingly, the district court's judgment is VACATED and the case is REMANDED for further proceedings.