

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 07-51196  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**  
July 30, 2008

Charles R. Fulbruge III  
Clerk

JAMES KIRBY SWINEY

Plaintiff-Appellant

v.

STATE OF TEXAS; COMAL COUNTY; CITY OF NEW BRAUNFELS;  
CHRISTOPHER SCOTT, Officer, New Braunfels Police Department; MICHAEL  
O PENSCHORN, Detective, New Braunfels Police Department; JOHN BAILY,  
Investigator, Comal County Sheriff's Department; DIB WALDRIP, District  
Attorney, Comal County; DOUGLAS WAKEMAN WILLIAMS; TRACY GILLIS;  
RUSSELL JOHNSON, Chief of Police, New Braunfels Police Department

Defendants-Appellees

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:06-CV-941

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Before STEWART, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

James Kirby Swiney, proceeding pro se, filed a complaint alleging violations of his civil rights and of his rights under the Americans with Disabilities Act ("ADA"). He also claims an unlawful seizure and deprivation of property.

The district court adopted the findings and recommendation of a magistrate judge to dismiss all of Swiney's claims. The district court found that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

two defendants had not been served with process, that some disputed property had been disbursed pursuant to a state court's order, that the law enforcement officers involved were entitled to qualified immunity, and that insufficient claims were stated under the ADA and for alleged violations of constitutional rights.

On appeal from the judgment, Swiney has submitted a brief identical to that which a panel of this court has already found to be without merit. *Cruell v. City New Braunfels, et al*, No. 07-50716, 2008 WL 485136 (5th Cir. Feb. 25, 2008) (unpublished). Although Swiney was not the appellant in the earlier decision, the appellant was involved in the same events on which Swiney has sued. The legal arguments in the two cases are the same and are no more availing today.

Essentially for the reasons stated by the magistrate and adopted by the district court, we AFFIRM.