

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

December 16, 2009

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 09-40317  
Summary Calendar  
\_\_\_\_\_

DAVID HOWETH, JR.,

Plaintiff-Appellant

v.

ASSISTANT WARDEN DAVID L. HUDSON; JEFFERY K. CALFEE; JOSEPH W. WILSON; MAJOR GARY L. GRAY; UNKNOWN MAJOR THOMAS; SERGEANT OF CORRECTIONS OFFICER FRANK G. WARNER; CAPTAIN TONY C. CARR; LIEUTENANT JORDAN SMITH, JR.; MAJOR GUEILLERMO DE LA ROSA; MAJOR JEFFERY W. CATO; KENNETH R. THOMPSON,

Defendants-Appellees

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Appeal from the United States District Court  
for the Eastern District of Texas

Lower Docket Number 5:08-CV-69  
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Before. JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:\*

Plaintiff-Appellant David Howeth Jr., TDCJ prison number 1174154, appeals from the ruling of the district court granting qualified immunity to all

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Defendants-Appellants, and dismissing Howeth's action with prejudice. All parties having dispensed with oral argument, we decide this appeal on the basis of the briefs and record. Our review of the record on appeal and the law as applicable to the facts presented satisfies us that the district court ruled correctly, committing no error in disposing of this case. Accordingly, essentially for the reasons given by that court, its rulings are, in all respects, **AFFIRMED.**

Furthermore, Howeth's Motion For Appointment Of Counsel is, **DENIED AS MOOT.**