

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-14375
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MARCH 6, 2008 THOMAS K. KAHN CLERK
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D. C. Docket No. 07-00195-CV-OC-10-GRJ

YOLONDA DEYVONNE BURT,

Plaintiff-Appellant,

versus

STAN YATES, Former Warden,
WARDEN, FCC Coleman – US PROBATION OFFICE I,
Tracy W. Johns,
R. VICKERS, Correctional Officer,
FNU GRANT, Lieutenant,
FNU BURKE, Correctional Officer, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(March 6, 2008)

Before CARNES, BARKETT, and HILL, Circuit Judges.

PER CURIAM:

Plaintiff's complaint was dismissed *sua sponte* by the district court for failure to pay the partial initial filing fee. There is nothing in the record to indicate that the district court took any steps to ascertain whether the failure to pay was within the prisoner's control, as required by *Wilson v. Sargent*, 313 F.3d 1315, 1321 (11th Cir. 2002). Nor is there anything in the record to indicate that the plaintiff was aware of the local rule of procedure, M.D. Fla. Local Rule of Procedure 1.03(e), upon which the district court relied in dismissing plaintiff's complaint, as required by *Czetli v. Secretary*, 212 Fed. Appx. 879, 881 (11th Cir. 2006). Inasmuch as both *Wilson* and *Czetli* clearly establish that such steps must be taken before the district court may *sua sponte* dismiss an indigent prisoner's *pro se* complaint, it was an abuse of discretion for the district court to have dismissed the complaint. *Wilson*, 313 F.3d at 1320. Accordingly, we vacate the dismissal and remand the case for further proceedings.¹

VACATED AND REMANDED.

¹As a factual matter, it appears that the Bureau of Prisons (BOP) is to blame for the failure to timely pay the filing fees, as the required amounts were deducted from plaintiff's prison account within the time required by the court, but the BOP failed to transmit the funds to the Clerk of the district court in a timely manner.