

United States Court of Appeals,

Eleventh Circuit.

Nos. 93-8905, 93-9165.

Linda L. HARRELL, Individually, as Personal Representative, and as Surviving Spouse of Larry Gene Harrell, Deceased, Plaintiff-Appellant,

v.

DECATUR COUNTY, GA., et al., Defendants-Appellees.

Jan. 10, 1995.

Appeal from the United States District Court for the Middle District of Georgia (No. 91-59-THOM).
J. Robert Elliott, District Judge.

ON PETITION FOR REHEARING

Before HATCHETT and DUBINA, Circuit Judges, and ESCHBACH*, Senior Circuit Judge.

PER CURIAM:

Our previous panel opinion reported at 22 F.3d 1570 (11th Cir.1994) is hereby VACATED.¹

After rehearing this case, which included the consideration of supplemental briefs and additional oral argument, we now affirm the district court's grant of summary judgment in all respects. We affirm for the reasons set forth in Judge Dubina's dissenting opinion in *Harrell*, 22 F.3d at 1577-1581, and this court's recent decision in *Lassiter v. Alabama A & M University*, 28 F.3d 1146 (1994) (en banc), which the panel did not have the benefit of at the time we released our opinion in *Harrell*.

AFFIRMED.

ESCHBACH, Senior Circuit Judge, concurring:

I agree with this court's decision to affirm the district court's grant of summary judgment on the question of qualified immunity for Deputy Morris in his individual capacity for the reasons set forth in Judge Dubina's dissenting opinion in *Harrell*, 22 F.3d at 1577-1580 and this court's recent

*Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

¹In an order filed with the clerk on August 29, 1994, the panel granted the defendants' petition for rehearing.

decision in *Lassiter v. Alabama A & M University*, 28 F.3d 1146 (11th Cir.1994) (en banc). I write separately to emphasize that we affirm the district court's grant of summary judgment with respect to the claims against Deputy Morris in his official capacity, Sheriff Phillips in his individual and official capacities, Decatur County, and the Decatur County Commissioners because of our determination that Harrell was not deprived of any constitutional rights for the reasons set forth in Judge Dubina's dissenting opinion in *Harrell*, 22 F.3d at 1580-81.