

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-60198  
Summary Calendar

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JOHN BENTON,

Plaintiff-Appellant,

versus

CAROLE TAYLOR, Individually and in official capacity as Marshall  
County Court Reporter; LUCY CARPENTER, Individually and in  
official capacity as Marshall County Circuit Court Clerk,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 3:99-CV-176-P-A  
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June 23, 2000

Before DAVIS, DUHÉ, and DeMOSS, Circuit Judges.

PER CURIAM:<sup>1</sup>

John Benton, Mississippi prisoner #R6103, appeals the dismissal of his 42 U.S.C. § 1983 petition for failure to state a claim. Benton argues that he did state a claim because his complaint alleged that his Due Process rights were violated by the lengthy delay in the production of his trial transcript and record when he was unable to pursue his appeal.

A claim against a court clerk for not providing court records on appeal is properly brought in a § 1983 civil rights suit because

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<sup>1</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

the prisoner is not challenging his conviction and he is not seeking his release from custody. Rheuark v. Shaw, 547 F.2d 1257, 1259 (5th Cir. 1977). “[D]ue process can be denied by any substantial retardation of the appellate process, including an excessive delay in the furnishing of a transcription of testimony necessary for completion of an appellate record.” Rheuark v. Shaw, 628 F.2d 297, 302 (5th Cir. 1980). The district court erred in finding that a delay in the production of a transcript and trial record could not state a cognizable § 1983 claim, and it failed to analyze Benton’s claim using the four factors enunciated in Rheuark. See Rheuark, 628 F.2d at 303 n.8. Accordingly, the judgment of the district court is vacated and the cause remanded for further proceedings.

VACATED and REMANDED.