

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2582
Conference Calendar

THOMAS EDWARD JONES,

Petitioner-Appellant,

versus

JAMES A. COLLINS, Director,
Texas Department of Criminal Justice,
Institutional Division,

Respondent-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-91-3543
- - - - -

May 6, 1993

Before POLITZ, Chief Judge,
HIGGINBOTHAM, and DEMOSS, Circuit Judges.

PER CURIAM:*

Thomas Edward Jones asserts that he is entitled to a free copy of the trial record. This Court conducts a de novo review of a district court's grant or denial of summary judgment. Reese v. Anderson, 926 F.2d 494, 498 (5th Cir. 1991). "For summary judgment to be granted, the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, must demonstrate that there is no genuine issue as to

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

any material fact and that the moving party is entitled to judgment as a matter of law." L & B. Hospital Ventures, Inc. v. Healthcare International, Inc., 894 F.2d 150, 151 (5th Cir.), cert. denied, 111 S.Ct. 55 (1990); Fed. R. Civ. P. 56(c).

Although fact questions are considered with deference to the non-movant, Rule 56 "requires the entry of a summary judgment against the party failing to make a showing sufficient to establish the existence of an element essential to that party's case." Id., citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

An indigent defendant has a constitutional right to a free trial transcript or an alternative device that fulfills the same function as a transcript on direct appeal. Griffin v. Illinois, 351 U.S. 12, 18-20, 76 S.Ct. 585, 100 L.Ed. 891 (1956). An indigent defendant, however, is not entitled to a free transcript if he had access to the record on direct appeal. Smith v. Beto, 472 F.2d 164, 165 (5th Cir. 1973); see also United States v. MacCollom, 426 U.S. 317, 325-326, 96 S.Ct. 2086, 48 L.Ed.2d 666 (1976) (federal defendant).

Jones was represented by counsel on direct appeal. Counsel's appellate brief shows that they had access to the trial record as it is replete with references to same. Because Jones fails to show a constitutional violation, he fails to establish an essential element of his federal habeas corpus claim. The district court correctly granted summary judgment.

The judgment is AFFIRMED.