

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-3512  
Conference Calendar

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KEVIN L. BARBER,

Plaintiff-Appellant,

versus

GREG SLADE, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. CA-91-3979-D  
- - - - -

(January 22, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Kevin L. Barber (Barber) appeals the dismissal of his 42 U.S.C. § 1983 complaint. In his appellate brief and a later motion, Barber requests a copy of his transcript at Government expense.

A litigant proceeding in forma pauperis may obtain a transcript at Government expense if "a circuit judge certifies that the appeal is not frivolous[.]" 28 U.S.C. § 753(f). He also must show why the transcripts are necessary for proper disposition of his appeal. Harvey v. Andrist, 754 F.2d 569, 571

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(5th Cir.), cert. denied, 471 U.S. 1126 (1985). A non-frivolous issue is one that is arguable on the merits. Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983).

Barber has raised no nonfrivolous issues for appeal. The credibility of witnesses is a matter left to the trier of fact. United States v. Parker, 586 F.2d 422, 429 (5th Cir. 1978), cert. denied, 441 U.S. 962 (1979). Barber failed to offer any specific support for his conclusional contention of improper credibility determinations. That contention thus is frivolous.

Nor has Barber shown any prejudice resulting from the district court's refusal to subpoena defendant Slade's work records. Barber contends that he would have used that record to show that Slade was violent and had had other complaints lodged against him. Barber further contends that the record will prove the perjury of a defense witness by showing that the witness knew that Slade was transferred and later relieved of duty because of his violent disposition. Barber could not use the specific instances of conduct in record to prove Slade's action in conformity therewith on the incident Barber alleged. United States v. Cochran, 546 F.2d 27, 29 (5th Cir. 1977); Fed. R. Evid. 608(b). Moreover, Barber could have asked the defense witness at trial if he knew of the incidents in question. See United States v. Nixon, 777 F.2d 958, 970 (5th Cir. 1985).

Motion for transcript DENIED. APPEAL DISMISSED. See 5th Cir. Loc. R. 42.2.