

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4606
Conference Calendar

SAMMY LEOS, JR.,

Plaintiff-Appellant,

versus

JAMES A. LYNAUGH ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:89-CV-375
- - - - -

August 17, 1993

Before JOLLY, JONES, and DUHE, Circuit Judges.

PER CURIAM:*

This is an appeal from a judgment based on a jury verdict in a civil rights action filed by Sammy Leos, Jr., an inmate in custody of the Texas Department of Criminal Justice, Institutional Division (TDCJ). In his complaint, Leos alleged that five TDCJ correctional officers used excessive force against him after one of them required him to submit to a strip search. We dismiss the appeal for lack of a trial transcript and inadequate briefing.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court denied Leos's motion for preparation of the trial transcript at government expense. The court also denied his motion for reconsideration. Judge Davis of this Court also denied Leos's application for the transcript. Leos has not sought review of Judge Davis's denial order. Leos did not obtain a transcript on his own, and therefore the trial transcript is not included in the appellate record.

In his brief, Leos contends that he is entitled to a new trial on grounds that the appellees in some way induced his witness, Roger Fuentes, not to appear in court to testify. The docket sheet shows that the court issued a writ of habeas corpus ad testificandum for Fuentes. He did not testify. Nothing in the record, however, supports Leos's assertion that the appellees had anything to do with Fuentes's not testifying.

Leos seems to contend that the district court erred by granting the appellees' motion to strike his amended complaint, which alleged in part that they destroyed evidence by deleting parts of the video tapes. The video equipment apparently malfunctioned. He asserts that more than 28 minutes of the tape were deleted. Leos has not presented argument on these points or cited legal authority on support of them. Accordingly, this Court will not consider them on the merits. Thompkins v. Belt, 828 F.2d 298, 302 (5th Cir. 1987).

Leos has not included in the record a copy of the trial transcript. "If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the

record a transcript of all evidence relevant to such finding or conclusion." Fed. R. App. P. 10(b)(2). "The failure of an appellant to provide a transcript is a proper ground for dismissal of the appeal." Richardson v. Henry, 902 F.2d 414, 416 (5th Cir.), cert. denied, 498 U.S. 901 (1990), 498 U.S. 1069 (1991).

Leos contends further that the district court erred by denying his motion for appointment of an expert to examine the video tape, allegedly because he was indigent. He asserts that during his trial, defense counsel repeatedly stated before the jury that he was a member of the Mexican Mafia, which is untrue. Finally, he complains that during trial, the defense "showed shanks 13 to 14 inches long," that were not relevant to the case. Leos contends that these events prejudiced the jury against him.

The merits of these contentions cannot be determined without reference to the trial transcript. Without a transcript we simply have no means of knowing what occurred at trial and what did not occur -- and if it did occur in what context and whether it prejudiced substantial rights of Leos. Because the transcript has not been included in the appellate record, Leos's appeal is due to be dismissed. Richardson v. Henry, 902 F.2d at 416.

APPEAL DISMISSED.