

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9117
Conference Calendar

FRANK PONDER,

Plaintiff-Appellant,

versus

WAYNE LECROY,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:92-CV-236-C
- - - - -

June 24, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Frank Ponder, an inmate of the Texas Department of Criminal Justice Institutional Division (TDCJID), proceeding pro se and in forma pauperis (IFP) filed a 42 U.S.C. § 1983 action against the district clerk of Lubbock County, Texas, seeking a free copy of his trial records.

An indigent is constitutionally entitled under the equal protection clause to a free transcript for an appeal of right when such a transcript would be available to an individual who

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

could pay for its preparation. Jackson v. Estelle, 672 F.2d 505, 506-07 (5th Cir. 1982) (citing Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956)). If Ponder is asserting that the district clerk violated his civil rights by not providing him with a copy of his transcript, this argument must fail because the record demonstrates that Ponder's appellate counsel was in possession of the transcript and statement of facts at the time he filed the appeal. The state is not obligated to provide the defendant a transcript so that he can conduct a fishing expedition by combing the record for possible trial errors. Id. at 506.

If Ponder, contrary to the argument he makes in his complaint, is in fact challenging the constitutionality of his conviction or sentence, he must first exhaust his state remedies. Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117, 1119 (5th Cir. 1987). If Ponder wants to assert that he received ineffective assistance of counsel, as it appears from his district court reply and his brief, he must raise this issue in a collateral proceeding in the state courts. Because Ponder offered no specific facts demonstrating that a genuine issue for trial existed, Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1118-19 (5th Cir. 1992), the district court's grant of summary judgment is AFFIRMED.