

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3646
Summary Calendar

MATTHEW JONES, JR.,

Plaintiff-Appellant,

v.

CHARLES C. FOTI, JR., Sheriff, et al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Eastern District of Louisiana
(CA-92-3570-G-5)

(April 19, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

As the district court's Memorandum and Order recognizes, credibility determinations are key to the outcome of this case. The initial credibility determinations were made by the magistrate judge in a hearing conducted under 28 U.S.C. § 636(b)(1)(B). After such a hearing, however, if written objections to the magistrate judge's proposed findings and

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

recommendations have been filed, the district court is required to "make a de novo determination of those portions of the report ... to which objection is made." 28 U.S.C. § 636(b)(1). In determining whether to accept, reject, or modify the magistrate judge's report and recommendations, the district court has a duty to conduct a careful and complete review, and must exercise his authority by reviewing the actual testimony. Hay v. Waldron, 834 F.2d 481, 487 (5th Cir. 1987). The district court's Memorandum and Order does not contain the usual recitation that the district judge had engaged in a de novo review of the record or listened to a tape of the hearing. Under the circumstances, perhaps out of an excess of caution, we think it advisable to vacate the district court's judgment and to remand in order to permit the district court to cure the deficiency.

VACATED and REMANDED.