

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5083
Summary Calendar

GREGORIO SANCHEZ, JR.,

Plaintiff-Appellant,

versus

DELTON W. ATWOOD, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Texas
(6:92-CV-757)

(July 14, 1994)

Before GARWOOD, SMITH and BARKSDALE, Circuit Judges.*

PER CURIAM:

Plaintiff-appellant Gregorio Sanchez, Jr. (Sanchez), a Texas prisoner, filed this suit against three prison guards, defendants-appellees, complaining that while he was in administrative segregation they beat him without justification. Pursuant to the consent of the parties, the case was tried on the merits before the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Magistrate Judge. At the trial, Sanchez and three other inmates called by him testified as well as two of the defendants and a nurse, and a video tape of the incident and Sanchez's medical records were introduced. Thereafter, the Magistrate Judge issued a well considered fifteen page opinion including her findings of fact and conclusions of law. The Magistrate Judge made findings favorable to the defendants, crediting their version of the events and finding that they acted reasonably, both objectively and subjectively, and with appropriate and nonexcessive force in subduing the obstreperous inmate Sanchez who posed a threat to security, and that they did not act in retaliation as claimed by Sanchez. The Magistrate Judge then issued judgment dismissing the suit. The conclusions of law of the Magistrate Judge are not facially erroneous and are supported by her findings of fact and each supports the judgment of dismissal.

Sanchez appeals. He asserts that it was error to prematurely dismiss his suit as frivolous. However, his suit was not so dismissed, but was dismissed only after full bench trial on the merits. Sanchez argues that the defendants acted in retaliation. This amounts to an attack on the Magistrate Judge's findings. However, any attack on the findings is barred because Sanchez has not furnished a trial transcript (and the evidence as summarized in the opinion below fully supports the findings and demonstrates they are not clearly erroneous). See *Powell v. Estelle*, 959 F.2d 22, 26 (5th Cir.), cert. denied, 113 S.Ct. 668 (1992); *Richardson v. Henry*, 902 F.2d 414, 416 (5th Cir. 1990), cert. denied, 498 U.S. 1069 (1991); Fed. R. App. P. 10(b)(2).

After he filed his notice of appeal, Sanchez filed a motion for transcript in the district court. The district court, on August 30, 1993, returned the motion to Sanchez instructing him to file a request for transcript in this court. Sanchez has never done so. Assuming, *arguendo*, that language in Sanchez's reply brief in this court can be construed as such a motion, that came too late, *Linton v. Laza*, No. 92-5292 (5th Cir., October 28, 1993) (unpublished), and is also inadequately supported.

Sanchez's complaint that he was not afforded a full and fair opportunity to prove his case is not supported by anything in the record before us. His complaint of the failure to appoint counsel at trial is made for the first time in his reply brief in this court and hence will not be considered. See *N.L.R.B. v. Cal-Maine Farms, Inc.*, 998 F.2d 1336, 1342 (5th Cir. 1993).

The judgment below is

AFFIRMED.