

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7665
Conference Calendar

JOHN E. MIDDLETON ET AL.,

Plaintiffs,

JOHN E. MIDDLETON,

Plaintiff-Appellant,

versus

KIRK FORDICE ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CA-3:93-34(P)(N)

- - - - -
(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

John E. Middleton argues that the magistrate judge erred in concluding that penal interests of the Southern Mississippi Correctional Institution outweighed the infringements occasioned by prison practices and regulations concerning the Muslim population. This Court cannot evaluate whether the magistrate judge properly rejected Middleton's First Amendment claims because the record on appeal does not include a transcript of 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

trial. Powell v. Estelle, 959 F.2d 22, 26 (5th Cir.), cert. denied, 113 S.Ct. 668 (1992). A pro se appellant who wishes to challenge findings or conclusions that are based on testimony at a hearing must provide a transcript to this Court. Id.; FED. R. APP. P. 10(b)(2). Middleton's failure to provide a transcript is a proper ground for dismissal of the appeal as to his claims concerning the magistrate judge's findings. Richardson v. Henry, 902 F.2d 414, 416 (5th Cir. 1990), cert. denied, 498 U.S. 1069 (1991). Thus, Middleton's appeal is DISMISSED. See Fifth Cir. Rule 42.2.