

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-7700
Summary Calendar

LARRY WEST,

Plaintiff-Appellant,

VERSUS

GLENN L. HOWELL, Superintendent,
SMCI, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(93-CV-11)

(April 8, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM¹

Larry West, an inmate at South Mississippi Correctional Institution (SMCI), filed this pro se § 1983 civil rights action against various SMCI employees.² West alleged that SMCI's regulation that prisoners may receive newspapers and periodicals from the publisher only violates his First Amendment rights. He

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

² The named defendants are Glenn Howell (superintendent), Richard Martin (associate superintendent), and Joe Bond (postal clerk supervisor).

sought the right to receive magazines from any source and \$8.70 to cover mailing costs. After an evidentiary hearing, the magistrate issued a report recommending dismissal of West's claim with prejudice. The district court adopted the magistrate's report. West appeals the dismissal of his claim.

In determining the constitutional validity of prison regulations that impinge on prisoner's rights, the appropriate inquiry is whether the regulation is reasonably related to legitimate penological interests. Thornburgh v. Abbott, 490 U.S. 401, 413 (1989) (citing Turner v. Safley, 482 U.S. 78 (1987)). This inquiry is answered through a review of the following factors: (1) whether there is a valid, rational connection between the regulation and the legitimate neutral governmental interest used to justify it; (2) whether there exist alternative means for prisoners to exercise the constitutional right at issue; (3) the impact of an accommodation on prison resources; and (4) whether any alternative exists that would fully accommodate prisoner's rights at low costs to valid penological interests. Id. at 414-18.

Plaintiff argues that the district court erred in finding that the regulation was reasonably related to prison security, a legitimate penological interest. We cannot, however, determine whether the court properly evaluated the factors in arriving at its conclusion because West did not provide a transcript of the hearing in the record on appeal. Nor did he move the district court or this Court for a transcript on the grounds of inability to pay. It was West's responsibility to provide a transcript of the hearing if

his contentions on appeal related to findings or conclusions made on the basis of that transcript. Fed. R. App. P. 10(b)(2). Because West has failed to provide this Court with the information necessary to make a decision, we accept the district court's conclusions. See Powell v. Estelle, 959 F.2d 22, 26 (5th Cir.) (per curiam) (affirming district court's conclusions where prisoners did not provide transcript of hearing and never moved the district court or this Court for a transcript on the grounds of inability to pay), cert. denied, 113 S. Ct. 668 (1992); cf. Richardson v. Henry, 902 F.2d 414, 416 (5th Cir. 1990) (dismissing prisoner's claims on appeal for failure to provide a transcript where prisoner moved the district court for a transcript on the grounds of inability to pay but did not reurge motion to this Court), cert. denied, 498 U.S. 901 (1990) and 498 U.S. 1069 (1991). Accordingly, the district court's finding that the regulation was reasonably related to a legitimate penological interest is AFFIRMED.