

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8818
Conference Calendar

MATTHEW PERKINS,

Plaintiff-Appellant,

versus

KARL D. NESS ET AL.

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-92-CA-233
- - - - -
(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Matthew Perkins, an inmate of the Texas Department of Corrections, Institutional Division (TDCJ-ID), appeals pro se and in forma pauperis from a judgment as a matter of law and jury verdict in favor of five correctional officers who Perkins alleged had used excessive force against him.

This Court cannot determine whether the district court and the jury properly rejected Perkins's claims because the record on appeal does not include a transcript of the trial. See Powell v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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 live testimony must provide a transcript to this Court. See id.; FED. R. APP. P. 10(b)(2). Perkins's failure to provide a transcript is a proper ground for dismissal of the appeal as to his claims concerning the district court and jury's findings. Richardson v. Henry, 902 F.2d 414, 416 (5th Cir. 1990), cert. denied, 498 U.S. 1069 (1991).

Perkins' additional motion for appointment of counsel is also DENIED, as his appeal does not present the "exceptional circumstances" needed to justify appointing counsel in a civil rights action. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

The appeal is DISMISSED. 5th Cir. R. 42.2.