IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20538
(Summary Calendar)

CHARLES R. YOUNG,

Plaintiff-Appellant,

versus

JOHN DYBVIG, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-89-4117)

July 6, 1995

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

In this appeal from the district court's judgment in favor of the state prison officials who were made defendants in the prisoners § 1983 suit, filed here by Plaintiff-Appellant, Charles R. Young, we have reviewed the record and the briefs filed in this

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

court and have found Young's appeal and his motion for default judgment to be singularly lacking in merit. For the reasons set forth below, therefore, we dismiss Young's appeal and, by separate order, deny his motion.

I

FACTS AND PROCEEDINGS

Proceeding pro se and in forma pauperis (IFP), Young filed a civil rights complaint against officials at the Texas Department of Criminal Justice where he is incarcerated. Young alleged that two prison guards, John Dybvig and Timmy K. Russel, who were supervised by Robert Treon, used excessive force while trying to subdue him in a hall where he was waiting to testify at a Spears[1] hearing. The case was tried to a judge who found in favor of the defendants.

Young filed in this court two "Motions for Transcripts" seeking a copy of the trial transcript at government expense as well as a copy of a video tape purported to show that the Defendants used excessive force. We denied the motions because Young failed to state why, or show that, he needed the transcript to present his appeal.

II

ANALYSIS

Young has appealed the judgment for the defendants and filed a "Motion for Default Judgment on Fact and Law," in which he again argues the merits of his appeal.

The Defendants-Appellees respond that Young's appellate brief

[1] Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

is inadequate because he identifies no trial court error and cites nothing in the record that supports his arguments. Pro se briefs must be liberally construed. Haines v. Kerner, 404 U.S. 519, 520 (1972); Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). Holding a pro se litigant to "less stringent standards" than that to which lawyers are held allows pro se claims, "however inartfully pleaded," to be considered. Haines, 404 U.S. at 520. Nevertheless, arguments must be briefed to be preserved on appeal. Price, 846 F.2d at 1028; see Fed. R. App. P. 28(a)(6).

A pro se habeas petitioner may not adopt previously filed arguments by reference. He abandons any arguments not made in the body of his appellate brief. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). A brief must contain a legal argument that indicates the basis for each contention. United States v. Tomblin, 46 F.3d 1369, 1376 n.13 (5th Cir. 1995).

An argument that is made without references to the pages in the original record on which the matter is to be found, if appropriate, is subject to dismissal. Moore v. FDIC, 993 F.2d 106, 107 (5th Cir. 1993) (citing Fed. R. App. P. 28(a)(4), (e); 5th Cir. R. 28.2.3). Such a dismissal is subject to reconsideration on a motion for rehearing in which the appellant remedies the deficiencies that compelled the dismissal. Moore, 993 F.2d at 107. Moore is an attorney-briefed case. Id. And, we have extended its holding to a pro se civil rights case. Pittman v. Garner, No. 93-8011, slip op. at 3 (5th Cir. Apr. 15, 1994) (unpublished).

Pittman, however, does not suggest that we would entertain the arguments on rehearing if the deficiencies were remedied. See id. at 3, 7.

Young's brief is largely a recitation of allegations underlying his civil rights claim, with no citations to authority or to the record that purport to show that he suffered a cognizable wrong. Young also contends that the district court abused its discretion when it did not require Dybvig to be present in the courtroom, when it refused to reverse itself based on the allegedly overwhelming evidence that Young presented in his motion for a new trial, and when it permitted Captain Treon to testify.

An appellant, even one pro se, who wishes to challenge findings or conclusions that are based on testimony at a hearing has the responsibility to order a transcript. Fed. R. App. P. 10(b); Powell v. Estelle, 959 F.2d 22, 26 (5th Cir.), cert. denied, 113 S. Ct. 668 (1992). We do not consider the merits of the issue when the appellant fails in that responsibility. Powell, 959 F.2d at 26; see also Richardson v. Henry, 902 F.2d 414, 416 (5th Cir.), cert. denied, 498 U.S. 901 (1990). "The failure of an appellant to provide a transcript is a proper ground for dismissal of the appeal." Richardson, 902 F.2d at 416.

Young asked for a transcript without stating why he needed one, leaving a judge of this court no choice but to deny Young's request. Thus Young has failed in his responsibility to provide a transcript. And Young is not entitled to a second bite at that apple. His appeal is, therefore,

DISMISSED.