

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30339
Conference Calendar

WARREN S. MURPHY,

Plaintiff-Appellant,

versus

CHARLES C. FOTI, JR., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-3043-D
- - - - -
(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Warren S. Murphy appeals the dismissal of his civil rights complaint following an evidentiary hearing before a magistrate judge. This Court reviews district courts' factual findings for clear error. *United States v. Mitchell*, 964 F.2d 454, 457 (5th Cir. 1992). A factual finding is not clearly erroneous so long as it is plausible in light of the record read as a whole. *United States v. Fields*, 906 F.2d 139, 142 (5th Cir.), cert. denied, 498 U.S. 874 (1989). This Court reviews the legal

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conclusions of district courts de novo. *United States v. Alvarez*, 6 F.3d 287, 289 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1384 (1994).

Murphy was a pretrial detainee when OPP denied him access to a telephone directory. Pretrial detainees are protected by the Fourteenth Amendment's Due Process Clause. *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). "A pretrial detainee . . . has a Fourteenth Amendment Due Process right to be free from punishment altogether." *Colle v. Brazos County*, 981 F.2d 237, 244 (5th Cir. 1993)(footnote omitted). "[I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Bell*, 441 U.S. at 539 (footnote omitted). Additionally, pretrial detainees have a right of access to the courts. *Walker v. Navarro County Jail*, 4 F.3d 410, 413 (5th Cir. 1993). The right of access is satisfied when the detainee has an attorney. *See Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977).

The First Amendment protects the right of detainees to have access to publications. A detainee may have access so long as such access is not "inconsistent with any legitimate jail function." *Mann v. Smith*, 796 F.2d 79, 83 (5th Cir. 1986). A detainee may assert a non-frivolous claim of deprivation of his First Amendment rights by alleging that prison officials prohibited access to a telephone directory. On the other hand, prison officials have a legitimate interest in the security of inmates and guards. *See Brewer v. Wilkinson*, 3 F.3d 816, 825

(5th Cir. 1993), *cert. denied*, 114 S. Ct. 1081 (1994).

Bordelon's testimony, as summarized by the magistrate judge, indicates that possession of large telephone directories by large numbers of inmates could create a fire hazard by introducing a massive amount of paper into the prison.** Bordelon's testimony also indicates that OPP's ban on telephone directories is not directed at the content of the directories but at their weight and the amount of paper contained within them. As the magistrate judge found, allowing each inmate to possess his own telephone directory would jeopardize the safety of both guards and inmates by increasing the risk of fire.

Murphy has not provided this Court with the transcript of the trial. An appellant is responsible for providing this Court with an adequate record with which to review his claims. This Court "decline[s] to review controversies in which the record is not supplied to [it]." *United States v. Hinojosa*, 958 F.2d 624, 632-33 (5th Cir. 1992). In the absence of a transcript, we are unable to say that the magistrate judge's finding that OPP's ban on telephone directories was motivated by security concerns is clearly erroneous. The magistrate judge's conclusion that the ban is reasonably related to that concern is also not erroneous.

Finally, Murphy had an attorney during the pendency of his criminal proceedings. His right of access to the courts, therefore, was not violated by OPP's denial of a telephone directory allegedly needed to prepare his defense.

**Murphy does not challenge the magistrate judge's summary of the trial testimony.

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AFFIRMED.