

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40909  
Conference Calendar

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WILLIE BERRY, JR.,

Plaintiff-Appellant,

versus

MELTON BROCK, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 93 cv 544  
- - - - -  
June 27, 1995

Before JONES, WIENER, and EMILIO E. GARZA, Circuit Judges.

PER CURIAM:\*

Willie Berry, Jr., a Texas state prison inmate, has appealed the dismissal of his civil rights action after a bench trial. Because his appeal is frivolous, it will be dismissed. See 5th Cir. R. 42.2.

Berry contends that he has been wrongly denied parole, by appellee Brock's withholding the information that Berry's good

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

time and line class status had been restored and by the appellee State Classification Committee's overlooking this. The court will not address this issue because it was not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Berry also asserts that he has been retaliated against relative to good-time and his inmate classification, because he has filed numerous grievances. The district court found that Berry had not been discriminated against. This court cannot review this finding because there is no trial transcript in the appellate record. Richardson v. Henry, 902 F.2d 414, 415-16 (5th Cir.), cert. denied, 498 U.S. 901 (1990), 498 U.S. 1069 (1991).

Berry has moved for the entry of a default, on grounds that appellees filed their brief late. This lacks merit because the court has granted leave to file the brief.

MOTION DENIED; APPEAL DISMISSED.