

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60256  
Conference Calendar

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LARRY WEST,

Plaintiff-Appellant,

versus

GREG HOOD, Correctional  
Officer - 1, SMCI,  
Leakesville, MS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. CA-2:93-253  
- - - - -  
(September 20, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Larry West argues that the magistrate judge erred in determining that defendant Hood's testimony was more credible than West's. West does not assert that the magistrate judge did not make the findings and conclusions embodied in the Memorandum Opinion and Order, but only that the magistrate judge should have believed his testimony instead of Hood's.

Factual findings and credibility determinations made at

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

trial are reviewed for clear error. See, e.g., Valdez v. San Antonio Chamber of Commerce, 974 F.2d 592, 596 (5th Cir. 1992). An appellant, even one pro se, who wishes to challenge findings or conclusions that are based on proceedings 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 an 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) (pro se appellant); Alizadeh v. Safeway Stores, Inc., 910 F.2d 234, 237 (5th Cir. 1990) (counseled appellant). West has not provided a transcript of the bench trial nor offered any evidence to support his allegation that the magistrate judge clearly erred regarding credibility determinations made at trial. We thus decline to consider his contention on appeal. See Alizadeh, 910 F.2d at 237.

West has failed to either list or brief the issue regarding deliberate indifference and thus, that claim raised in the district court has been abandoned on appeal. Hobbs v. Blackburn, 752 F.2d 1079 1083 (5th Cir.), cert. denied, 474 U.S. 838 (1985).

AFFIRMED.