

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50689
Conference Calendar

CORNELIUS RAY SEPHUS,

Plaintiff-Appellant,

versus

A. PAGAN, Officer, Hondo TDCJ,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-94-CV-354

April 15, 1997

Before REAVLEY, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM:*

The Prison Litigation Reform Act applies to this appeal. See Strickland v. Rankin County Correctional Facility, 105 F.3d 972, 973-76 (5th Cir. 1997). Cornelius Ray Sephus (#586047) has complied with the certification requirements of the PLRA and his motion for leave to proceed in forma pauperis is GRANTED.

Sephus is ORDERED to pay an initial partial filing fee in the amount of \$3.33. Sephus must also make monthly payments of

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

20% of the preceding month's income credited to his account. See 28 U.S.C. § 1915(b)(2). The agency having custody of Sephus is ORDERED to forward payments from his account to the clerk of the district court each time the amount in his account exceeds \$10.00, until the filing fee is paid.

Sephus has not shown that exceptional circumstances require appointment of counsel. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). Sephus's motion for appointment of counsel is DENIED.

Sephus has not obtained a copy of the trial transcript. It is the appellant's responsibility to provide a transcript of all relevant evidence to support his appellate argument. See Fed. R. App. P. 10(b)(2); Powell v. Estelle, 959 F.2d 22, 26 (5th Cir. 1992). Sephus contends that a video tape of Sephus playing basketball nine to 10 months after the use-of-force incident should not have been introduced into evidence and that the district court erred in admitting the testimony of a medical doctor who had not examined Sephus. Because Sephus cannot demonstrate that he preserved error by lodging a contemporaneous objection to this evidence, we review these issues for plain error. See Fed. R. Civ. P. 52(a). Sephus cannot meet this standard.

Sephus contends that the district court erred in permitting the defendant to impeach Sephus with evidence of his criminal conviction. In civil trials, a district court must admit

evidence of a witness' prior felony conviction. Coursey v. Broadhurst, 888 F.2d 338, 342 (5th Cir. 1989). Therefore, Sephus cannot show that the district court erred in admitting the evidence.

Sephus contends that he "was denied his rights to have all his witnesses located and subpoenaed to court." As requested by Sephus, the district court issued writs of habeas corpus ad testificandum requiring the presence of Sephus's witnesses. Sephus has failed to show any error, plain or otherwise, on the part of the district court.

Sephus contends that the jury ignored evidence and that inconsistencies in the testimony of defense witnesses undermine the jury's verdict. Because the transcript has not been provided, it cannot be determined whether Sephus moved for judgment as a matter of law at the close of the trial. Accordingly, Sephus's challenge to the jury verdict is reviewed under the plain-error standard. See Phillips v. Frey, 20 F.3d 623, 627 (5th Cir. 1994). Because Sephus has not produced the transcript, he is unable to meet this standard.

Because the appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. Sephus is cautioned that any future frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. Sephus is cautioned further to review any pending

appeals to ensure that they do not raise arguments that are frivolous.

IFP GRANTED; INITIAL PARTIAL FILING FEE ASSESSED; MOTION FOR APPOINTMENT OF COUNSEL DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.