

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20172
Conference Calendar

LELAND BRADLEY FOUSE,

Plaintiff-Appellant,

versus

WAYNE SCOTT, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION; EARL FOX,

Defendant-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-94-CV-4216
- - - - -

April 10, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Appellant Leland Bradley Fouse, TDCJ-ID # 629726, appeals the district court's judgment in favor of the defendants in his civil rights action brought pursuant to 42 U.S.C. § 1983. He argues that the district court erroneously denied his motion to continue his trial.

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.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

App. P. 10(b); Powell v. Estelle, 959 F.2d 22, 26 (5th Cir. 1992). This court does not consider the merits of an issue when an appellant fails in that responsibility. Powell, 959 F.2d at 26.

Fouse has not provided a trial transcript. We thus decline to consider his contentions on appeal. See Alizadeh v. Safeway Stores, Inc., 910 F.2d 234, 237 (5th Cir. 1990).

Because there is no issue of arguable merit, the appeal is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Therefore, it is DISMISSED. See 5TH CIR. R. 42.2.