

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 97-4266

Herbert Phillip Malone,

Appellant,

v.

Steve Walton, Infirmery
Administrator/Manager, Arkansas
Department of Correction; PHP
Healthcare Corporation, (Originally
sued as P.H.P. Medical Group),

Appellees.

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Appeal from the United States
District Court for the
Eastern District of Arkansas.

[UNPUBLISHED]

Submitted: May 6, 1999
Filed: May 11, 1999

Before WOLLMAN, Chief Judge, RICHARD S. ARNOLD, and BEAM, Circuit
Judges.

PER CURIAM.

Herbert P. Malone appeals the judgment of the district court¹ dismissing his 42
U.S.C. § 1983 action following a bench trial. Because Malone did not provide a trial

¹The Honorable Henry L. Jones, Jr., United States Magistrate Judge for the
Eastern District of Arkansas, to whom the case was referred for final disposition by
consent of the parties pursuant to 28 U.S.C. § 636(c).

transcript, we cannot review the court's factual findings, Malone's claim of judicial bias, or the denial of his evidentiary motions, including his motions to call witnesses. See Fed. R. App. P. 10(b); Van Treese v. Blome, 7 F.3d 729, 729 (8th Cir. 1993) (per curiam). Based on the district court's factual findings, we conclude the court properly rejected Malone's medical indifference claim. See Dulany v. Carnahan, 132 F.3d 1234, 1239 (8th Cir. 1997). Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.