

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5292
Conference Calendar

STEVEN B. LINTON,

Plaintiff-Appellant,

versus

CARL S. LAZA, COIII Prison
Guard,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:91-CV-234
- - - - -
(October 28, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Although appellant Steven B. Linton called the brief that he filed in reply to the appellees' letter brief a motion for leave to file an amended brief, it is actually a reply brief. See Fed. R. App. P. 28(c). It raises new issues. Issues may not be raised for the first time in a reply brief, even by a pro se appellant. Knighen v. Commissioner, 702 F.2d 59, 60 & n.1 (5th Cir.), cert. denied, 464 U.S. 897 (1983).

The only issue in Linton's original brief, liberally

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

construed, is a challenge to the sufficiency of the evidence. An appellant, even one pro se, who wishes to challenge findings or conclusions that are based on testimony 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). This Court does not consider the merits of the 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).

Linton did request a transcript, but he made that request long after his original and reply briefs and long after the appellees' letter briefs. Well before the request, the district court informed Linton that he could ask this Court for a transcript and the appellees raised the issue. Granting the request at this late date would disadvantage the appellees. Linton has given us no reason to do that.

APPEAL DISMISSED.