

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8192
Conference Calendar

PAULBERT TENARD KIRVIN,

Plaintiff-Appellant,

versus

MICHAEL WISEMAN, Officer,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-92-CA-53
- - - - -
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

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). This Court does 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

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(1990).

Paulbert Tenard Kirvin argues that the district court made evidentiary errors in his bench trial. Kirvin has failed in his responsibility to provide a transcript. He neither ordered one nor requested one at government expense. Without a transcript, an evidentiary ruling is unreviewable. Richardson, 902 F.2d at 416. The sufficiency of the evidence is also unreviewable without a transcript. Powell, 959 F.2d at 26.

On motion for new trial, the district court determined that Kirvin had not objected to a non-jury trial prior to or during trial and accordingly had waived a jury. Failure to object to proceeding without a jury prior to or during a non-jury trial waives one's right to a jury. Casperone v. Landmark Oil & Gas Corp., 819 F.2d 112, 116 (5th Cir. 1987); Jones v. Birdsong, 679 F.2d 24, 28 (5th Cir. 1982), cert. denied, 459 U.S. 1202 (1983).

We know that Kirvin did not object prior to trial. Without a transcript, we do not know whether he objected during trial. The district court's determination that Kirvin waived a jury is unreviewable.

Kirvin mentions but does not argue other issues. Without being argued, they are not preserved for review. Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). For Kirvin's failure to provide a transcript, his issues that are preserved present nothing for us to review.

AFFIRMED.