

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-41073  
Conference Calendar

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FABIAN THOMAS MARTIN,

Plaintiff-Appellant,

versus

DANNY HAMMER, CO III; JAMES W. NASH,  
CO III; and OLIN C. STATHAM, JR.,  
CO III,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:93-CV-649

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June 27, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

The thirtieth day after the entry of the judgment from which Fabian Thomas Martin appeals was a Sunday. Martin's notice of appeal was timely when it was filed on the thirty-first day after judgment. Fed. Rs. App. P. 4(a)(1), 26(a).

The magistrate judge, before whom the parties consented to proceed, found the defendants' testimony at a bench trial more

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

credible than Martin's testimony. Martin challenges that finding on appeal.

An appellant, even one pro se, who wishes to challenge findings or conclusions that are based on trial testimony 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). "The failure of an appellant to provide a transcript is a proper ground for dismissal of the appeal." Richardson, 902 F.2d at 416.

Martin previously asked for a transcript without stating why he needed one. A judge of this court denied his request and told him that he could ask again if he were to state an adequate reason. Martin did not ask again; he merely filed a brief.

Martin, therefore, failed in his responsibility to provide a transcript. For Martin's failure to comply with Fed. R. App. P. 10(b), his

APPEAL IS DISMISSED.