

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 10-15416  
Non-Argument Calendar

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| FILED<br>U.S. COURT OF APPEALS<br>ELEVENTH CIRCUIT<br>NOVEMBER 9, 2011<br>JOHN LEY<br>CLERK |
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D.C. Docket No. 0:06-cv-61082-WPD

RAFAEL A. LLOVERA LINARES,

Plaintiff-Appellant,

versus

BROWARD COUNTY SHERIFF'S OFFICE, et al.,

Defendants,

OFFICER FELIX VASCONEZ,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida

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(November 9, 2011)

Before HULL, PRYOR and BLACK, Circuit Judges.

PER CURIAM:

Rafael Linares appeals pro se the denial of his motion for relief from a civil judgment. Fed. R. Civ. P. 60(b)(6). Linares challenges a judgment entered in July 2008 in favor of the Broward County Sheriff's Office and Felix Vasconez, which this Court affirmed in September 2009. We affirm.

The district court did not abuse its discretion by denying Linares's motion. Linares argues that the district court erred when it failed to serve a witness before trial and by denying Linares's motion for a continuance to serve subpoenas, but this "“appeal does not bring up the underlying judgment for review.”" Cavaliere v. Allstate Ins. Co., 996 F.2d 1111, 1115 (11th Cir. 1993) (quoting Glass v. Seaboard Coast Line R.R. Co., 714 F.2d 1107, 1109 (11th Cir. 1983)). Linares also argues about the insufficiency of the evidence, but this Court refused on appeal to review the issue "“in the absence of a trial transcript,”" Linares v. Broward Cnty. Sheriff's Office, No. 08-14674, slip op. at 11 (11th Cir. Sept. 8, 2009), and Linares cannot "“use . . . [his] Rule 60(b) motion as a substitute for a proper and timely appeal,”" Cavaliere, 996 F.2d at 1115 (quoting Burnside v. E. Airlines, Inc., 519 F.2d 1127, 1128 (5th Cir. 1975)).

We **AFFIRM** the denial of Linares's motion for relief.