

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-40320  
Conference Calendar

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PAUL HAROLD RICE,

Petitioner-Appellant,

versus

DAVID LINE,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 3:00-CV-45  
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December 11, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Paul Harold Rice, Texas prisoner # 900007, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous and for failure to state a claim. Rice, however, does not argue that the district court's decision was error, and, instead, he moves this court to treat his 42 U.S.C. § 1983 complaint as a 28 U.S.C. § 2254 petition. Because he does not argue that the district court's decision was error, he has waived that issue on appeal. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

This appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. 5th Cir. R. 42.2.

APPEAL DISMISSED; Motion to treat civil rights complaint as federal habeas petition DENIED.