

May 7, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40248
Summary Calendar

GEORGE ALLEN DAY

Petitioner - Appellant

v.

UNITED STATES PAROLE COMMISSION

Respondent - Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:02-CV-354

Before KING, Chief Judge, and WIENER and CLEMENT, Circuit Judges.

PER CURIAM:*

George Allen Day, a former federal prisoner, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition, challenging the October 2001 decision to deny him parole and seeking immediate release. Day concedes that, subsequent to filing the instant petition, he was released from prison. However, he asserts that dismissal of his petition was error because he met the jurisdictional requirement of being "in custody" at the time he filed the petition.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Day misapprehends the district court's dismissal. His petition was dismissed as moot, not for lack of jurisdiction. Day's petition challenged only the procedures by which the Parole Commission denied him parole in October 2001 and requested relief in the form of immediate release from prison. The petition presents no live case or controversy following Day's release from prison, and it was thus properly dismissed as moot. See Spencer v. Kemna, 523 U.S. 1, 7-18 (1998); Rocky v. King, 900 F.2d 864, 867 (5th Cir. 1990). The appeal is without arguable merit and is therefore DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

APPEAL DISMISSED.