

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41640
Conference Calendar

LARRY FISHER,

Plaintiff-Appellant,

versus

JOE D. CLAYTON,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:04-CV-428

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Larry Fisher, Texas prisoner # 671581, appeals from the dismissal of his mandamus action, in which Fisher sought for the district court to compel the state trial court to allow him to withdraw his plea of guilty to aggravated robbery. Fisher also moves for appointment of counsel; his motion is denied.

Fisher does not contend that the district court erred by dismissing his mandamus petition for lack of jurisdiction. Fisher thus has failed to brief the sole relevant issue for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

appeal. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Moreover, the district court lacks jurisdiction to compel the state court to allow Fisher to withdraw his guilty plea. See Moya v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1275-76 (5th Cir. 1973); see also Santee v. Quinlan, 115 F.3d 355, 356 (5th Cir. 1997). Fisher's appeal is dismissed as frivolous; neither the district court's dismissal of the mandamus petition nor our dismissal of Fisher's appeal counts as a strike pursuant to 28 U.S.C. § 1915(g). See 5TH CIR. R. 42.2.

APPEAL DISMISSED. APPOINTMENT OF COUNSEL DENIED.