

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-20160  
Conference Calendar

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JOHN THOMAS BAGLEY,

Plaintiff-Appellant,

versus

GARY L. JOHNSON, Director,  
Texas Department of Criminal Justice  
Institutional Division,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-96-CV-697  
- - - - -

December 9, 1997

Before BARKSDALE, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

John Thomas Bagley, Texas prisoner # 652853, appeals the dismissal of his civil rights complaint as frivolous. Bagley does not suggest that the district court erred by construing his complaint as naming Texas Department of Criminal Justice (TDCJ) Director Gary Johnson as the sole defendant. Thus, to the extent that his complaint alleged claims against any other defendant, Bagley has abandoned those claims. Yohey v. Collins, 985 F.2d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

222, 223-24 (5th Cir. 1993); FED. R. APP. P. 28(a)(6).

Bagley does not allege any personal action by TDCJ Director Johnson. Therefore the dismissal of the complaint was within the discretion of the district court. Williams v. Luna, 909 F.2d 121, 123 (5th Cir. 1990); 28 U.S.C. § 1915(e)(2)(B)(i); Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997).

The appeal is frivolous, being without arguable merit, and it is therefore DISMISSED. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). 5TH CIR. R. 42.2. The district court's and this court's dismissals as frivolous count as two "strikes" under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g).

DISMISSED.