

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50946
Conference Calendar

SHANNON DAY,

Plaintiff-Appellant,

versus

GARY PAINTER, Sheriff of
Midland County, Texas,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-98-CV-35
- - - - -

August 27, 1999

Before KING, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Shannon Day, Texas prisoner no. 683576, appeals the district court's denial of his motion for reconsideration of the district court's order dismissing his 42 U.S.C. § 1983 claim pursuant to 42 U.S.C. 1997e(c)(1). Day's motion to strike Painter's response brief and his motion to supplement the record are DENIED. The district court did not err in dismissing Day's complaint based upon *res judicata*; Day's pleadings before the district court and on appeal make clear that his arguments, including those

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

pertaining to fraud and discovery abuses, are an attempt to relitigate issues already resolved in Day v. Painter, MO-94-CA-223 (W.D. Tex. Mar. 6, 1996). See United States v. Shanbaum, 10 F.3d 305, 310 (5th Cir. 1994)(discussing the elements of *res judicata*). Day's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Day's appeal is DISMISSED. 5TH CIR. R. 42.2.

APPEAL DISMISSED; ALL OUTSTANDING MOTIONS DENIED.