

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20900
Conference Calendar

J.W. MCCOWAN,

Petitioner-Appellant,

versus

THE STATE OF TEXAS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CV-1440

December 11, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

J.W. McCowan, Texas prisoner #786708, filed an appeal from the district court's dismissal of his petition for a writ of mandamus. See 28 U.S.C. § 1361. The district court dismissed the petition for lack of subject-matter jurisdiction. McCowan now moves this court for a voluntary dismissal of his appeal without prejudice.

Section 1361 does not provide jurisdiction for McCowan's suit because he does not seek to compel performance from an officer or employee of the United States. McCowan concedes that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

he cannot establish jurisdiction. The instant appeal, however, does not qualify for dismissal without prejudice. See Fed. R. App. P. 42(b); 5th Cir. R. 42.4. Accordingly, the appeal is DISMISSED with prejudice.