

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-40463  
Summary Calendar

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DONALD MOODY,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
INSTITUTIONAL DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:02-CV-10  
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February 5, 2003

Before JONES, STEWART and DENNIS, Circuit Judges.

PER CURIAM:\*

Donald Moody, Texas prisoner # 677242, appeals the district court's denial of his 28 U.S.C. § 1651 petition for writ of error coram nobis, challenging his 1993 conviction for two counts of attempted murder. Although Moody contends that the district court erred in failing to consider the merits of his petition, he briefs no argument challenging the reasons for the

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court's denial, and he has thus waived the sole ground for appeal. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Even if the argument has not been waived, Moody cannot show any error in the district court's judgment because, as the district court determined, he remains in custody on the challenged conviction, rendering him ineligible for coram nobis relief. See Jimenez v. Trominski, 91 F.3d 767, 768 (5th Cir. 1996).

Moody's appeal is wholly without arguable merit, is frivolous, and is therefore DISMISSED. See 5TH CIR. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). We CAUTION Moody that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Moody is further CAUTIONED to review pending appeals to ensure that they do not raise arguments that are frivolous.

**APPEAL DISMISSED; SANCTIONS WARNING ISSUED.**