

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 5, 2012

Lyle W. Cayce
Clerk

No. 12-10066
Summary Calendar

ROBERT RICH,

Petitioner-Appellant

v.

WARDEN R. TAMEZ, FCI Fort Worth,

Respondent -Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:11-CV-206

Before KING, CLEMENT, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Robert Rich, federal prisoner # 19351-077, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition as an abuse of the writ. Our review is for an abuse of discretion. *See James v. Cain*, 56 F.3d 662, 665 (5th Cir. 1995).

A § 2241 petition is considered to be abusive if it raises "the same legal issue" addressed and resolved in a prior filing. *United States v. Tubwell*, 37 F.3d 175, 177-78 (5th Cir. 1994); *see also Williams v. Tamez*, 466 F. App'x 326, 327 (5th Cir. 2012) (finding that district court did not abuse its discretion in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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dismissing a § 2241 petition as an abuse of the writ where the petition raised the same legal issue as a prior petition). Despite Rich's purported modifications to his second § 2241 petition which would allow him to bring a *Richardson* claim under the savings clause, the legal issue remains the same. Moreover, Rich's arguments that his second petition was not successive, that the district court should not have dismissed his petition sua sponte, and that the district court's sanction warning was unfair, all are without merit.

The appeal is without arguable merit and therefore frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). The Government's motion to dismiss the appeal as frivolous is GRANTED. The Government's alternative motion for summary affirmance or an extension of time to file a brief is DENIED. Rich is warned that future frivolous filings will result in the imposition of sanctions, including monetary sanctions and restrictions on his ability to file pleadings in this court or any court subject to this court's jurisdiction.