

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

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No. 15-10222  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

August 27, 2015

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID EARL KATES,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:97-CR-42

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Before REAVLEY, SMITH, and HAYNES, Circuit Judges

PER CURIAM:\*

David Earl Kates, federal prisoner # 30428-077, is an abusive litigant and has been sanctioned on several occasions. On February 24, 2015, Kates submitted a motion under 18 U.S.C. § 3582(c)(2) seeking a reduction in his sentence. In accordance with a prior sanction order, this pleading was stricken without a ruling from the district court. We review such actions for an abuse of discretion. *Gelabert v. Lynaugh*, 894 F.2d 746, 747-48 (5th Cir. 1990).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Kates has filed a brief arguing the merits of his request for a sentence reduction, but he has not addressed the district court's enforcement of the sanction order. Accordingly, he has abandoned the threshold issue for appeal. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). As Kates's appeal does not present a legal issue arguable on its merits, it is frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983).

The appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.