

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50146  
Conference Calendar

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STATE OF TEXAS,

Plaintiff-Appellee,

versus

PAUL W. KIMMELL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-94-CV-64  
- - - - -

(July 21, 1994)

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

PER CURIAM:\*

Paul Kimmell's only argument directed to the district court's denial of removal is, liberally construed, that the district court erred in remanding to the state court and should have transferred the case pursuant to 28 U.S.C. § 1631. Kimmell had the burden of establishing his right to removal under § 1443. State of Tex. v. Gulf Water Benefaction Co., 679 F.2d 85, 86 (5th Cir. 1982). A removal petitioner must show both that (1) the right allegedly denied him arises under a federal law providing for specific rights stated in terms of racial equality and that

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

(2) he is denied or cannot enforce the specified federal rights in the state courts due to some formal expression of state law. Id. Kimmell's removal petition fails to meet either test: it does not allege the deprivation of a race-related federal civil right nor does it show his inability to enforce the right due to a formal expression of Texas state law. Kimmell's suggestion that the district court should have remanded to "the proper jurisdiction pursuant to the Hague Conference (Treaty) on Private International Law," is frivolous. Moreover, because Kimmell failed to present and brief any argument challenging the district court's imposition of Rule 11 sanctions, the propriety of that aspect of the district court's order is not before this Court. Evans v. City of Marlin, Tex., 986 F.2d 104, 106 n.1 (5th Cir. 1983).

Accordingly, this appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because it is frivolous, the appeal is dismissed. 5th Cir. R. 42.2. We caution Kimmell that if he persists in his frivolous filings, he will be subject to the full panoply of this Court's sanctions, including permanent denial of access to the courts.

DISMISSED.