

108 Fed.Appx. 848

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fifth Circuit Rules 28.7, 47.5-3, 47.5-4. (Find CTA5 Rule 28 and Find CTA5 Rule 47)

United States Court of Appeals,  
Fifth Circuit.

Guadalupe GUAJARDO, Jr.; et al., Plaintiffs,  
Guadalupe Guajardo, Jr., Plaintiff-Appellant,  
v.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
EXECUTIVE DIRECTOR, Defendant-Appellee.

No. 03-21211 | Summary Calendar. | Decided Aug. 13,  
2004.

#### Attorneys and Law Firms

\*849 Guadalupe Guajardo, Jr, Huntsville, TX, pro se.

Jacqueline Lee Haney, Assistant Attorney General, Austin, TX, for Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Texas, USDC No. H-71-CV-570.

Before EMILIO M. GARZA, DeMOSS, and CLEMENT, Circuit Judges.

#### Opinion

PER CURIAM:\*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Guadalupe Guajardo, Jr., Texas inmate # 170864, appeals from the district court's denial, for lack of jurisdiction, of his motion seeking to hold the defendant in contempt and for injunctive relief. Guajardo filed his motion in the underlying class action litigation after the class plaintiffs had noticed their appeal from the district court's final judgment terminating the prospective \*850 relief afforded by a consent decree pursuant to provisions of the Prison Litigation Reform Act (PLRA). See 18 U.S.C. § 3626.

This court subsequently affirmed the district court's judgment. See *Guajardo v. Texas Dept. of Criminal Justice*, 363 F.3d 392 (5th Cir.2004), *petition for cert. filed*, (U.S. June 11, 2004) (No. 03-1663).

“This circuit follows the general rule that the filing of a valid notice of appeal from a final order of the district court divests that court of jurisdiction to act on the matters involved in the appeal, except to aid the appeal, correct clerical errors, or enforce its judgment so long as the judgment has not been stayed or superseded.” *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897, 928 (5th Cir.1983). Guajardo's brief nominally advances seven arguments. However, even according his filing the benefit of liberal construction, we are able to ascertain only four distinct contentions.

<sup>[1]</sup> <sup>[2]</sup> Guajardo's argument that the district court could not terminate the consent decree because it was a contract is an attack on the underlying judgment terminating the consent decree, rather than a jurisdictional argument, and it does not show error on the part of the district in denying Guajardo's motion for lack of jurisdiction. In any event, given the termination provisions of 18 U.S.C. § 3626, Guajardo's argument is without merit. See *Agostini v. Felton*, 521 U.S. 203, 215, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997).

<sup>[3]</sup> Guajardo argues that the consent decree remained in effect during the pendency of the appeal from the district court's termination of the consent decree. His contention fails because no party sought a stay of the district court's final judgment terminating the consent decree. See *United States v. City of Alexandria*, 614 F.2d 1358, 1361 (5th Cir.1980); FED.R.CIV.P. 62(c).

<sup>[4]</sup> Because the district court's final judgment was not stayed, and because the judgment put an end to all prospective relief afforded by the decree, any distinction between “termination” and “vacatur” of the consent decree is without legal significance. See 18 U.S.C. § 3626(b)(2), (7), (9). Finally, we reject Guajardo's contention that the district court had jurisdiction over his motion pursuant to the All Writs Act. See *Williams v. McKeithen*, 939 F.2d 1100, 1104 (5th Cir.1991).

The judgment of the district court is AFFIRMED.

#### Parallel Citations

2004 WL 1809536 (C.A.5 (Tex.))