

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

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No. 16-11107  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 12, 2017

Lyle W. Cayce  
Clerk

CHRISTOPHER LEE GAITHER,

Plaintiff-Appellant

v.

GREGORY S. DAVID, Assistant Warden; RAY D. CRUZ, Captain; GENE W. SMITH, Captain; DEANA R. DAVIS, Correctional Officer V; ANDREW M. GRATZ, Sergeant,

Defendants-Appellees

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:15-CV-104

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Before JOLLY, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:\*

Christopher Lee Gaither, Texas prisoner # 01821218, appeals the dismissal of his civil rights complaint against several prison officials under 42 U.S.C. § 1983. However, after Gaither filed his appellate brief in this court, the district court granted Gaither's motion under Federal Rule of Civil Procedure 59(e) and reopened the case. Because the district court explicitly

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 16-11107

vacated the judgment of dismissal from which Gaither appealed, this appeal does not present a live controversy and is moot. *See Rocky v. King*, 900 F.2d 864, 867 (5th Cir. 1990). Accordingly, the appeal is DISMISSED as MOOT, and Gaither's motion for appointment of counsel is DENIED.