

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

No. 16-10136
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 10, 2016

Lyle W. Cayce
Clerk

GERY LEE SCOTT,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CV-20

Before JOLLY, DAVIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Gery Lee Scott, Texas prisoner # 1123905, seeks leave to proceed in forma pauperis (IFP) to appeal the district court's transfer of his 28 U.S.C. § 2254 application as successive and unauthorized. Scott was convicted of injury to a child-bodily injury and sentenced to 35 years of imprisonment. He raised claims challenging his conviction and sentence on the basis of an

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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allegedly unlawful sentence enhancement as well as the state and federal postconviction proceedings.

This appeal is frivolous and without merit because the district court correctly determined that the § 2254 application was successive and unauthorized under 28 U.S.C. § 2244(b)(3)(A). *See* § 2254(a); *Leal Garcia v. Quarterman*, 573 F.3d 214, 222 (5th Cir. 2009); *Moore v. Dretke*, 369 F.3d 844, 846 (5th Cir. 2004). Accordingly, Scott's motions for IFP and appointment of counsel are DENIED, and his appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2; FED. R. APP. P. 24(a)(5); *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982).

This is Scott's third unsuccessful attempt to challenge his conviction and sentence. He is WARNED that future frivolous or repetitive filings will result in the imposition of sanctions.