

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7660

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JOHN S. JORDAN,

Petitioner-Appellant,

versus

EDWARD HARGETT, Superintendent,  
Mississippi State Penitentiary,  
ET AL.,

Respondents-Appellees.

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Appeal from the United States District Court for  
the Northern District of Mississippi

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(May 15, 1995)

Before POLITZ, Chief Judge, REAVLEY, KING, GARWOOD, JOLLY,  
HIGGINBOTHAM, DAVIS, JONES, SMITH, DUHÉ, WIENER, BARKSDALE,  
EMILIO M. GARZA, DeMOSS, BENAVIDES, STEWART and PARKER, Circuit  
Judges.

PER CURIAM:

The panel ordered this case remanded to the district judge to conduct his own evidentiary hearing before rejecting the magistrate judge's findings on the credibility of the witnesses. Jordan v. Hargett, 34 F.3d 310 (5th Cir. 1994). Since vacating the panel opinion, the en banc court is informed that the attorney who defended Jordan in the state trial but did not testify at the magistrate judge's hearing has now been located

and is prepared to contribute his testimony on the question of whether the defendant acceded to the attorney's advice in not testifying. Because of the uncertainty of what may ultimately be determined to be the facts underlying the questions raised in this case, we conclude that we need not decide the questions of constitutional law discussed in the panel opinion. The panel opinion remains vacated. We remand to the district court for further proceedings.

Judgment of the District Court is VACATED and Case REMANDED.