

October 9, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-30520

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KIRK K HALL,  
Petitioner-Appellant,

versus

BURL CAIN, WARDEN, LOUISIANA STATE PENITENTIARY,  
Respondent-Appellee.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 3:99-CV-541-C  
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Before HIGGINBOTHAM, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

The petitioner in this case, a criminal defendant convicted of second degree murder, appeals from the denial of his claim for habeas relief on the grounds that he received inadequate assistance of counsel because of a conflict of interest. A magistrate judge initially reviewed the claim, which did not allege specifics, concluding in a report that the performance of counsel was adequate. The defendant filed two pro se "objections" to the report, adding additional details in support of his claims. The

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court noted that it had considered the filings as "objections," adopted the report as is, and denied habeas relief.

We have previously held that it can be an abuse of discretion for a district court to fail to liberally construe pro se filings as motions to amend the initial complaint. United States v. Riascos, 76 F.3d 93, 94 (5th Cir. 1996). The facts here are virtually identical. We therefore REVERSE and REMAND to the district court to consider leave to amend the complaint in light of Riascos.