

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7587  
Conference Calendar

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REYNALDO T. GARZA,

Petitioner-Appellant,

versus

WAYNE SCOTT, Director,  
Texas Department of Criminal Justice,  
Institutional Division,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. M-93-CV-132  
- - - - -

(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:\*

In the only issue raised on appeal, Reynaldo Garza contends that the failure of the trial court to instruct on the lesser included offense of voluntary manslaughter relieved the state of the burden of disproving that he committed the murder under the influence of sudden passion.

The failure of a state trial judge to instruct a jury on a lesser included offense is not a federal constitutional matter in a non-capital case and does not entitle Garza to habeas relief.

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Valles v. Lynaugh, 835 F.2d 126, 127 (5th Cir. 1988).

Accordingly, the district court's dismissal of Garza's petition for habeas relief is affirmed.

AFFIRMED.