

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-30103
Summary Calendar

HERBERT H. WILLIAMS,

Petitioner-Appellant,

VERSUS

JAMES P. WHITLEY, Warden, Louisiana State Penitentiary
and ATTORNEY GENERAL, State of Louisiana,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-40780E-6)

(August 29, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Herbert Williams, a state prisoner, sought habeas relief in the district court. The district court denied relief on the basis that this was Williams's second petition and it constituted abuse of the writ. The district court granted a certificate of probable cause for appeal. We vacate the district court judgment and remand.

Respondent correctly concedes that the district court

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

incorrectly dismissed Williams's second petition pursuant to Rule 9(b) because his first petition was, in reality, a petition for mandamus relief and not a petition for habeas relief. See Williams v. Whitley, 93-3610 (5th Cir. March 23, 1994) (unpublished). At the time the district court dismissed Williams's second petition, this Court had not yet ruled that his first petition was indeed an application for mandamus and not for habeas relief. Because we originally held that the district court incorrectly characterized Williams's first petition as a habeas corpus petition when in fact it was a mandamus petition, we vacate the district court's dismissal of his second petition and remand for further proceedings.

VACATED and REMANDED.