

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10963
Conference Calendar

EMMIT BRAGER,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:88-CV-2570-R
- - - - -

December 11, 1996

Before WIENER, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Emmit Brager, Texas state prisoner #311725, appeals from the district court's denial of his request for relief pursuant to 28 U.S.C. § 1651. Brager argues that the district court erred by denying his requests for the appointment of counsel at his 1991 evidentiary hearing and contends that he had been entitled to such representation pursuant to Rule 8 of the Rules Governing

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Section 2254 Cases. We have reviewed the record and find no reversible error. This appeal is without arguable merit and is thus frivolous. See Howard v. King, 715 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. Brager's request for a certificate of appealability is DENIED as unnecessary. See 28 U.S.C. § 2253.

APPEAL DISMISSED.