

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20106
Summary Calendar

SAMUEL CITIZEN,

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 Southern District of Texas
USDC No. J-95-CV-4689
- - - - -

May 27, 1996

Before JOLLY, JONES and STEWART, Circuit Judges.

PER CURIAM:*

Texas prisoner Samuel Citizen presented his challenge to the sufficiency of the evidence to the Texas Court of Criminal Appeals in his second state habeas petition. Consequently, the district court abused its discretion by dismissing Citizen's federal habeas petition for failing to exhaust state remedies as to this issue. Therefore, it is ORDERED that Citizen's motion

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

for a certificate of probable cause is GRANTED, the order of dismissal is VACATED, and the case is REMANDED to the district court.