

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-40548  
Summary Calendar

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REGINALD R. GOSS,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, INSTITUTIONAL DIVISION;  
ATTORNEY GENERAL, STATE OF TEXAS,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
(C-95-CV-556)

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February 24, 1997

Before JONES, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Reginald R. Goss, Texas prisoner #684326, appeals the district court's dismissal of the 28 U.S.C. § 2254 petition for failure to exhaust his state remedies. Goss is now required to obtain a certificate of appealability (COA) in order to appeal the district court's order. We will not issue a COA, however, as Goss has not made a substantial showing of the denial of a

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

constitutional right. See 28 U.S.C. § 2253(c)(2); see also Drinkard v. Johnson, 97 F.3d 751, 756 (5th Cir. 1996). In the alternative, if the district court was authorized to issue COA, we conclude that because the state record indicates that Goss failed to present his claim that the prosecution withheld exculpatory evidence to the Texas Court of Criminal Appeals, the district court did not err in dismissing Goss' § 2254 petition for failure to exhaust his state remedies. See Dispensa v. Lynaugh. 847 F.2d 211, 217-18 (5th Cir. 1988).

For the foregoing reasons, COA is DENIED; and the judgment is AFFIRMED.