

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40582
Summary Calendar

RICHARD JAMES RANDLE,

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 Eastern District of Texas
(6:96-CV-246)

April 3, 1997

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Richard Randle, Texas prisoner # 648432, appeals the district court's dismissal of his 28 U.S.C. § 2254 petition for abuse of the writ. We hold for essentially the reasons stated by the magistrate judge and adopted by the district court that Randle's petition was properly dismissed. **Randle v. Johnson**, No. 6:96cv246 (E.D. Tex. Apr. 16 and May 10, 1996). Further, any error regarding the district court's failure to provide Randle with notice concerning

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

the possible dismissal for abuse of the writ was harmless. See *Johnson v. McCotter*, 803 F.2d 830, 833 (5th Cir. 1986).

The appellee's motion for reconsideration of its motion to dismiss is **DENIED**. See *Else v. Johnson*, ___ F.3d ___ (5th Cir. Jan. 27, 1997, No. 96-40404) 1997 WL 8835, at *1. Randle's motion for appointment of counsel is also **DENIED**. See *Schwander v. Blackburn*, 750 F.2d 494, 502 (5th Cir. 1985).

AFFIRMED