

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40823
Conference Calendar

TODD W. ALTSCHUL,

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. G-96-47
- - - - -
February 24, 1997

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Todd W. Altschul, Texas prisoner #586467, filed a notice of appeal from the magistrate judge's report, which recommended that his petition for writ of habeas corpus be dismissed. This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). At the time of filing the notice of appeal, the district court had not entered a final or otherwise appealable order; orders of

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.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 magistrate judge are not appealable to this court. Trufant v. Autocon, Inc., 729 F.2d 308, 309 (5th Cir. 1984).

Altschul's motion to proceed in forma pauperis is DENIED.

APPEAL DISMISSED.