

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50625

TOMMY LEE JACKSON,

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 Western District of Texas
USDC No. W-96-CV-216

March 17, 1997

Before SMITH, DUHE', and BARKSDALE, Circuit Judges.

PER CURIAM:*

Tommy Lee Jackson (Texas prisoner # 652114), moves this court for a certificate of appealability (COA) and leave to appeal *in forma pauperis* (IFP) from the district court's order that he make partial payment of the filing fee. To proceed IFP, Jackson must meet the requirements of FED. R. APP. P. 24(a). Jackson has met these requirements; IFP is GRANTED.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.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 district court erred in concluding that the filing fee was \$120. The filing fee for Jackson's federal habeas petition is \$5. See 28 U.S.C. § 1914(a). Because the district court's denial of IFP status was based on the incorrect premise that Jackson was required to pay \$120 to proceed, Jackson has made a substantial showing of error by the district court. Furthermore, the Prison Litigation Reform Act of 1995 does not apply to this habeas corpus action. *United States v. Cole*, 101 F.3d 1076, 1077 (5th Cir. 1996). COA is GRANTED. The order of the district court assessing a filing fee of \$120 and requiring partial payment thereof is REVERSED and the case is REMANDED to the district court for further proceedings.