

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 97-10109
(Summary Calendar)

LEON HARPER,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION, IN HIS
OFFICIAL CAPACITY,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:96-CV-1940-X

January 20, 1998

Before JONES, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

Leon Harper, Texas prisoner #640518, appeals from the district court's dismissal without prejudice of his habeas petition for failure to exhaust his state remedies as to three grounds. Harper

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

argues that the district court erred in dismissing his complaint under the exhaustion doctrine.

Respondent concedes that Harper has exhausted his state court remedies and that the district court's judgment should be reversed and the case remanded to the district court for further proceedings. A review of the state-court records confirms the parties' position. Harper exhausted state remedies on the first three issues raised in his federal habeas petition by presenting them on direct appeal to the court of appeals and on petition for discretionary review to the Texas Court of Criminal Appeals. Accordingly, the judgment of the district court is REVERSED and this case is REMANDED to the district court for further proceedings.

REVERSED AND REMANDED.