

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-30739  
Summary Calendar

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JUVENTINO MUNOZ,

Plaintiff-Appellant,

versus

JOHN M. MAMOULIDES;  
LAWRENCE ALTERMAN,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 97-MC-1088  
- - - - -

December 11, 1997

Before JOLLY, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:\*

The district court construed Juventino Munoz's (Louisiana prisoner # 352797) civil rights complaint as a petition for habeas corpus. The court then dismissed the petition without prejudice for failure to exhaust state remedies. Munoz challenges the dismissal, arguing that the state waived the exhaustion requirement.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Munoz filed his complaint in May 1997, the provisions of the AEDPA are applicable. See Green v. Johnson, 116 F.3d 1115, 1120 (5th Cir. 1997). Under the AEDPA, Munoz cannot appeal the district court's dismissal of his 28 U.S.C. § 2254 petition unless the district court or this court grants him a certificate of appealability (COA). § 2253 (c)(1)(A); Muniz v. Johnson, 114 F.3d 43, 45 (5th Cir. 1997).

Although this court will construe Munoz's notice of appeal as a request for COA in this court, there was no request for or ruling on a COA in the district court. This case is therefore REMANDED to the district court according to Muniz for the limited purpose of obtaining a ruling on a COA.

REMANDED.