

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41109
USDC No. 6:97-CV-617

CLYDE J. BURRELL,

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

July 21, 1998

Before JOLLY, DAVIS and JONES, Circuit Judges.

BY THE COURT:

Clyde J. Burrell, Texas inmate #689253, seeks a certificate of appealability (COA) to appeal the dismissal of his habeas petition, a dismissal based upon Burrell's failure to exhaust his state-court remedies. IT IS ORDERED that COA is GRANTED and the case is VACATED AND REMANDED for further proceedings. Clark v. Williams, 693 F.2d 381, 382 (5th Cir. 1982).

The Texas courts will not entertain a habeas challenge such as Burrell's which challenges thirteen prison disciplinary proceedings. See Ex parte Palomo, 759 S.W.2d 671, 674 (Tex. Crim. App. 1988); Ex parte Brager, 704 S.W.2d 46, 46 (Tex. Crim.

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App. 1986). Burrell argues that he sufficiently exhausted his administrative remedies through the prison grievance system and that this is sufficient exhaustion. The district court's dismissal relied exclusively on the lack of exhaustion through the presentation of the claims in state court. On remand, the district court should determine whether Burrell's habeas challenge to thirteen disciplinary proceedings has been exhausted through the prison grievance system and if so, whether the challenge has merit.

COA GRANTED. VACATED AND REMANDED.