

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-41266

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MARK LEROY O'BRYAN,

Petitioner-Appellant,

versus

GARY L. JOHNSON, Director, Texas Department of Criminal Justice,  
Institutional Division

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:97-CV-121  
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April 12, 2000

Before REYNALDO G. GARZA , HIGGINBOTHAM, and BENAVIDES, Circuit  
Judges.

PER CURIAM:\*

A certificate of appealability was granted to petitioner-  
appellant Mark Leroy O'Bryan with respect to the issue of whether  
his trial counsel denied him his right to testify in his own  
defense at his criminal trial and as to whether the district  
court erred in denying O'Bryan an evidentiary hearing to develop  
this claim.

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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that this opinion should not be published and is not precedent  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.

Upon a careful review of the record and the briefs, we AFFIRM the district court's Order and Final Judgment dated September 25, 1998, denying O'Bryan's petition for writ of habeas corpus, for essentially the reasons set forth by the magistrate judge and adopted by the district court.

We further find that, as conducting an evidentiary hearing to explore the issue of whether trial counsel refused O'Bryan his right to testify would not have aided the district court in the resolution of his habeas petition, the district court did not abuse its discretion in denying O'Bryan's request for an evidentiary hearing.

Accordingly, the judgment of the district court is AFFIRMED.

AFFIRMED.