

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20166
USDC No. H-98-CV-2966

RODNEY NORMAN ROSS, JR.,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeals from the United States District Court
for the Southern District of Texas

October 21, 1999

Before JOLLY, JONES and BENAVIDES, Circuit Judges.

PER CURIAM:*

Rodney Norman Ross, Jr., Texas prisoner #763978, moves for a certificate of appealability (COA) to appeal the district court's denial of his request for *in forma pauperis* (IFP) status and the dismissal of his case with prejudice. Ross contends that his initial pleading in the district court, entitled "Application for Leave to File Applicant's Motion for Habeas Corpus Review in the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Interest of Justice," was not a 28 U.S.C. § 2254 petition, but that his pleading in case number 98-3438 was intended as his original § 2254 petition. However, case number 98-3438 was dismissed with prejudice on the basis that it was duplicative of the instant case. Thus, the merits of Ross's § 2254 petition have not been addressed, and this case remains the sole vehicle for pursuing those claims.

Accordingly, COA is GRANTED. The district court's order dismissing Ross's case with prejudice is VACATED and this case is REMANDED for consideration of Ross's Application for Leave to File Applicant's Motion for Habeas Corpus Review in the Interest of Justice.

Ross' motion to proceed IFP on appeal is GRANTED.

COA AND IFP GRANTED; VACATED AND REMANDED.