

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50915
USDC No. EP-97-CV-200-F

SANTIAGO DELGADO MEDRANO,

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 Western District of Texas

March 2, 1998

Before KING, HIGGINBOTHAM and DAVIS, Circuit Judges.

BY THE COURT:

Santiago Delgado Medrano seeks a certificate of appealability (COA) from the denial of his petition filed pursuant to 28 U.S.C. § 2254. 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 district court erred in determining that Medrano had failed to exhaust his state remedies on his claims that he was denied a speedy trial and the right to be present at a critical stage of trial given that he presented them on direct review to

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the Texas Court of Criminal Appeals. See Richardson v. Procunier, 762 F.2d 427, 429, 431-32 (5th Cir. 1982). On remand, the district court should afford Medrano the opportunity to file an amended petition deleting his remaining two unexhausted claims. See Rose v. Lundy, 455 U.S. 509, 520 (1982); McGruder v. Phelps, 608 F.2d 1023, 1025 (5th Cir. 1979).

COA GRANTED; VACATED AND REMANDED.