

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10418
Conference Calendar

DARRELL RUSSELL,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION, IN HIS
OFFICIAL CAPACITY,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:97-CV-15
- - - - -

April 19, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:*

Darrell Russell, Texas prisoner # 674336, appeals from the district court's dismissal without prejudice of his 28 U.S.C. § 2254 petition for failure to exhaust his state remedies. The district court granted a certificate of appealability on the exhaustion issue.

Unbeknownst to the district court, the Texas Court of Criminal Appeals denied Russell's state application shortly

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

before the entry of the district court's order. The respondent now concedes exhaustion. Accordingly, we VACATE and REMAND for further proceedings. Russell's motions to expedite the appeal are DENIED as MOOT.

VACATE AND REMAND; MOTIONS DENIED.