

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-31058  
Summary Calendar

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ELI J. GUILLORY,

Petitioner-Appellant,

versus

BURL CAIN, Warden, Louisiana  
State Penitentiary,

Respondent-Appellee.

- - - - -  
Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 97-CV-2342  
- - - - -

March 30, 1999

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Eli J. Guillory, Louisiana state prisoner #89473, moves for leave to appeal in forma pauperis (IFP). Although we initially granted Guillory leave to file his successive 28 U.S.C. § 2254 application in district court, we have since held that his claim of an unconstitutional jury instruction on reasonable doubt does not meet the requirements of 28 U.S.C. § 2244(b)(2)(A). See in re Smith, 142 F.3d 832, 834-36 (5th Cir. 1998). Accordingly, the appeal is DISMISSED. Guillory's IFP motion is DENIED as moot.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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