

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-41223
Summary Calendar

HARWOOD EUGENE LOWE,

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 Eastern District of Texas
USDC No. 1:97-CV-233

December 22, 1999

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Harwood Eugene Lowe appeals from the district court's dismissal of his 28 U.S.C. § 2254 petition. He argues that the district court erred by determining that his claim that he was denied a fair trial because the state trial court denied his request for a jury instruction on self-defense was procedurally barred. We find that the district court erred by determining that Lowe's habeas claim was procedurally barred. Accordingly, the district court's judgment dismissing Lowe's habeas petition

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

is vacated and the case is remanded for further proceedings. See Sonnier v. Johnson, 161 F.3d 941, 946 (5th Cir. 1998); Whitehead v. Johnson, 157 F.3d 384, 388 (5th Cir. 1998).

VACATED AND REMANDED.