

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40837
Summary Calendar

DONALD WAYNE JOHNSON,

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 Southern District of Texas

October 21, 1999

Before HIGGINBOTHAM, DeMOSS, AND STEWART, Circuit Judges.

HIGGINBOTHAM, Circuit Judge:

Donald Wayne Johnson appeals the dismissal of his 28 U.S.C. section 2254 petition. Johnson was convicted of capital murder under Texas Penal Code section 19.03(a)(2) for murder during the course of committing a robbery. He received a sentence of life imprisonment. As he did on direct appeal, Johnson argues in his habeas petition that there was insufficient evidence that he formed the intent to rob the victim before or during the murder.

Johnson was convicted of stabbing a 74-year-old schoolteacher. The state presented evidence that after the murder, Johnson obtained false identification and cashed the victim's paycheck, drove the victim's car, and was wearing the victim's watch at the

time of arrest. Further, evidence suggested no motive other than robbery for the murder. There was no evidence that Johnson had a prior acquaintance with the victim. Johnson borrowed a weapon on the morning of the murder and theft. The murder scene indicated no signs of a fight between the victim and his killer.

Johnson's case is distinguishable from Cruz v. State, on which he relies. In that case, the defendant and victim roomed together, the defendant claimed that they had an altercation leading to the murder, and the state linked only the victim's watch to the defendant. The appellate court found insufficient evidence in light of other plausible explanations for motive and the small value of the stolen property. Cruz v. State, 629 S.W.2d 852, 858-60 (Tex. App. 1982). In Johnson's case, the evidence suggests no other motive for the murder, and the amount of stolen property was much more substantial.

This court finds that there was sufficient evidence to support Johnson's conviction for capital murder.

AFFIRMED.