

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20785
Summary Calendar

LINDSEY EVERETT HOLLOWAY,

Petitioner-Appellant,

versus

JANIE COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CV-1659
- - - - -

May 14, 2002

Before DeMOSS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

Lindsey Everett Holloway, Texas prisoner #287889, was granted a certificate of appealability (COA) by this court on the issue whether his claim that he is entitled to release to mandatory supervision based upon his having served a total of approximately 62 years, including good time, on his 99-year sentence, was improperly dismissed as successive. 28 U.S.C. § 2253. Holloway has shown that the district court erred in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismissing his failure-to-release claim as successive, and respondent concedes that the claim is not successive. See In re Cain, 137 F.3d 234, 236-37 (5th Cir. 1998). Accordingly, the district court's dismissal of Holloway's failure-to-release claim as successive is VACATED, and this case is REMANDED for consideration of the merits of that claim.

Holloway's motions (1) for leave to file an out-of-time motion to reconsider the denial of COA, and (2) to supplement his out-of-time motion to reconsider the denial of COA are DENIED.

VACATED AND REMANDED; PETITIONER'S MOTIONS DENIED.