

June 3, 2005

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-21173

Charles R. Fulbruge III
Clerk

BOBBY LEE HINES; BILLY FRANK VICKERS; KEVIN LEE ZIMMERMAN,

Petitioners-Appellants,

versus

GARY JOHNSON, Executive Director, Texas Department of Criminal
Justice; DOUG DRETKE, Director, Texas Department of Criminal
Justice, Correctional Institutions Division; NEILL HODGES,
Warden, Huntsville Unit, Huntsville, Texas; and UNKNOWN
EXECUTIONERS,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
H-03-CV-5594

ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES

Before GARZA, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Appellant Bobby Lee Hines has been convicted of capital murder and sentenced to death by the Texas State Courts for the brutal murder of Michelle Wendy Haupt. Mr Hines filed the instant lawsuit under 42 U.S.C. §1983 alleging violation of the Eighth and Fourteenth Amendments challenging the constitutionality of Texas's execution protocol. The district court dismissed Hines' action for failure to state a claim upon which relief may be granted. This

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

court affirmed. The Supreme Court, however, vacated the judgment and remanded the case for consideration in light of *Nelson v. Campbell*, 541 U.S. 637 (2004). We have reconsidered the case in light of *Nelson* and subsequent circuit precedent. After doing so we conclude that our judgment affirming the district court's decree should be reinstated on the alternate grounds established in *Aldrich v. Johnson*, 388 F.3d 159 (5th Cir. 2004). For the alternate reasons assigned, the original judgment of the court affirming the district court's judgment is reinstated.