

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-10341

IN RE: JAMES EDWARD CLAYTON,
Petitioner.

Appeal from the United States District Court
for the Northern District of Texas

June 27, 1995

ON PETITION FOR WRIT OF MANDAMUS

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

James Clayton was convicted and sentenced to death in Texas state court. He filed a motion in federal district court seeking appointment of co-counsel and an investigator. The magistrate, finding that any federal habeas petition would contain unexhausted claims, denied the motion without prejudice, and Clayton seeks review via mandamus. Prisoners are not entitled to federal appointment of counsel and investigators to pursue unexhausted claims; the right attaches only after state proceedings are finished. See In re Joiner, No. 95-10376 (5th Cir. June 27, 1995); Sterling v. Scott, No. 94-10297 (5th Cir. June 22, 1995). DENIED.

KING, Circuit Judge, specially concurring:

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Although I am uneasy about our holding in Sterling v. Scott, No. 94-10297 (5th Cir. June 22, 1995), I agree that Sterling controls the outcome here and I therefore concur.