

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 95-20521
Summary Calendar

RUSSELL DWAIN ABERLY,

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
(CA-H-94-193)

April 22, 1996

Before POLITZ, Chief Judge, KING and DENNIS, Circuit Judges.

PER CURIAM:*

Russell Dwaine Aberly appeals the dismissal of his second federal habeas corpus petition under 28 U.S.C. § 2254. The trial court found abuse of the writ under Rule 9(b) of the Rules Governing Section 2254 Cases. Aberly's first federal habeas petition, alleging ineffective assistance of counsel, was dismissed with

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

prejudice. We affirmed that dismissal for lack of prosecution. The instant petition again raises the ineffective assistance of counsel claim, adding an additional reason. The trial court dismissed and denied a request for a certificate of probable cause. We granted CPC.

Having considered the briefs and record, on the basis of the findings of fact, authorities cited, and reasons assigned by the trial court in its Order rendered June 14, 1995 and entered June 15, 1995, the judgment appealed is AFFIRMED.