

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30886
Summary Calendar

BENJAMIN MACKEY,

Petitioner-Appellant,

versus

BURL CAIN, Warden, Louisiana State Penitentiary;
RICHARD P. IEYOUB, Attorney General, State of Louisiana,

Respondents-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana
(96-CV-694-E)

April 7, 1997

Before HIGGINBOTHAM, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Benjamin Mackey, Louisiana inmate #126019, appeals the dismissal, without prejudice, of his habeas petition for failure to exhaust state remedies. We have carefully reviewed the arguments and the appellate record. For essentially the same reasons upon which the district court relied by adopting the magistrate judge's

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

report, see Mackey v. Cain, No. 96-694 (E.D. La. Aug. 13, 1996), we conclude that the district court did not clearly err in its finding that Mackey did not present his federal habeas claim to the state supreme court and therefore, the district court did not err in basing dismissal on Mackey's failure to exhaust.

AFFIRMED.