

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50162
USDC No. W-96-CV-36

BOBBY JOE SMITH,

Petitioner-Appellant,

versus

STATE OF OKLAHOMA et al.,

Respondents-Appellees.

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

June 14, 1996

Before HIGGINBOTHAM, DUHE' and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Bobby Joe Smith requests a certificate of probable cause (CPC) to appeal. The district court dismissed Smith's habeas corpus petition for failure to exhaust state remedies, but did not specify which state or what remedies were to be exhausted. He was not given an opportunity in the district court to show, as he has alleged in this court, that attempting to exhaust state

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

remedies would be futile. See 28 U.S.C. § 2254(b); Deters v. Collins, 985 F.2d 789, 795 n.16 (5th Cir. 1993). Smith's request for CPC is GRANTED. The judgment of the district court is VACATED, and this action is REMANDED to the district court to determine what, if any, remedies are available to Smith in Texas and/or Oklahoma, and whether his attempt to exhaust state remedies would be futile.

VACATED and REMANDED.