

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-20782  
Summary Calendar

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KENNETH RANDALL WITHERS,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-96-CV-3850

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August 4, 1998

Before JOLLY, SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

In this appeal from the denial of 28 U.S.C. § 2254 habeas corpus petition, this court granted Kenneth Randall Withers, a Texas prisoner (# 687233), a certificate of appealability ("COA") with respect to "the issue whether the trial court's direction

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that [Withers'] standby counsel attend a discovery meeting without Withers violated his right to self-representation."

In 1994, Withers was convicted by jury of aggravated robbery after being granted the right to proceed pro se with standby counsel. Withers has failed to demonstrate that standby counsel "substantially interfere[d] with any significant tactical decision" on Withers' part, see McKaskle v. Wiggins, 465 U.S. 168, 178-79 (1984), when the prosecution before trial allegedly disclosed to standby counsel information that the robbery suspect wore a jacket with a "western yoke," and standby counsel in turn failed to convey this information to Withers. The judgment of the district court is AFFIRMED.

Withers' "Motion of Request for Additional Relief" is DENIED.

AFFIRMED; MOTION DENIED.