

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40091  
USDC No. 9:96-CV-158

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DARNELL JOHNSON,

Petitioner-Appellant,

versus

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

Respondent-Appellee.

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

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October 7, 1997  
Before DUHE', DeMOSS and DENNIS, Circuit Judges.

BY THE COURT:

Darnell Johnson, Texas prisoner #265926, requests a certificate of appealability (COA) from the district court's denial of his federal habeas petition, 28 U.S.C. §§ 2241, 2254. Johnson contends that he received ineffective assistance of counsel during his parole revocation proceedings.

Johnson's petition was filed on April 2, 1996, prior to the date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The Supreme Court recently held in

Lindh v. Murphy, 117 S. Ct. 2059, 2067-68 (1997), that the AEDPA's amendments to the habeas corpus statutes, which include the successive habeas provisions of 28 U.S.C. § 2244, apply only to cases filed after the AEDPA's effective date of April 24, 1996.

Accordingly, Johnson's motion for a COA is construed as a request for a certificate of probable cause (CPC) and CPC is GRANTED. The case is VACATED and REMANDED to the district court for consideration of Johnson's petition under pre-AEDPA standards. See Moran v. Stadler, \_\_\_ F.3d \_\_\_ (5th Cir. September 8, 1997, No. 96-30892), 1997 WL 476407 at \*1 (petition filed in the district court prior to the effective date of the AEDPA is not subject to the AEDPA's successive habeas provisions).

Johnson's motion for leave to proceed in forma pauperis (IFP) in this court is GRANTED.

COA GRANTED; IFP GRANTED; VACATED and REMANDED.