

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40178  
Summary Calendar

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DAVID ROBLES,

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. C-96-CV-131

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March 2, 1998

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges

PER CURIAM:\*

David Robles, Texas prisoner # 193550, appeals from the district court's dismissal of his petition for a writ of habeas corpus as abusive pursuant to Rule 9(b) of the Rules Governing Section 2254 Cases.

Robles argues that the district court erred by dismissing his petition as an abuse of the writ because he has shown that a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

miscarriage of justice would result from the court's failure to address the merits of his petition.

We review a district court's decision to dismiss a petition pursuant to Rule 9(b) for abuse of discretion. Hudson v. Whitley, 979 F.2d 1058, 1062 (5th Cir. 1992). Because Robles cannot make an "actual innocence" showing, as defined in Sawyer v. Whitley, 505 U.S. 333, 336 (1992), he fails to show that a fundamental miscarriage of justice would result from the court's failure to address the merits of his petition.

The district court's judgment dismissing the petition as abusive pursuant to Rule 9(b) is AFFIRMED.