

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41009
Summary Calendar

FERNANDO THOMPSON,

Petitioner-Appellant,

versus

GARY L. JOHNSON, Director,
Texas Department of Criminal Justice,
Institutional Division,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:96-CV-139
- - - - -

January 6, 1999

Before KING, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Fernando Thompson, Texas prisoner #353532, filed an application under 28 U.S.C. § 2254 for writ of habeas corpus challenging his 1978 conviction for aggravated robbery. According to Thompson, he was released on mandatory supervision on September 9, 1993, but he was not eligible for that release until March of 1994. Under Ex parte Morris, 626 S.W.2d 754, 756-57 (Tex. Crim. App. 1982), such an error invalidates the release and entitles the prisoner to actual credit against his sentence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

"for the calendar time when he was at liberty." The Texas court also considered it a violation of due process to deprive a prisoner of his accrued good time credits as a result of the revocation of an invalid release. Ex parte Morris, 626 S.W.2d at 757. Neither the Respondent nor the district court addressed these issues. Accordingly, the judgement of the district court is VACATED and the case REMANDED to the district court to develop fully the record and to rule on the merits of the erroneous-release issue.

VACATED and REMANDED.