

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10249

JEFFREY HENRY CALDWELL,

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 Northern District of Texas
(3:95-CV-0625)

February 18, 2000

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:*

We grant the Certificate of Probable Cause, but affirm for essentially the reasons stated by the magistrate judge and adopted by the district court.

The court below refused to grant Caldwell's request for leave to amend his petition to assert a claim under Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595 (1986). Refusing leave to amend was not error for the reason that the claim was premature. Texas has recently provided a procedure for testing the competency of a person to be executed. That procedure remains available to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

petitioner under Article 46.04, Texas Code of Criminal Procedure
(effective September 1, 1999).

AFFIRMED.