

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

**FILED**

March 13, 2006

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 02-11096  
\_\_\_\_\_

BILLY RAY NELSON

Petitioner-Appellant

versus

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS DIVISION

Respondent-Appellee

- - - - -  
Appeal from the United States District Court for the  
Northern District of Texas  
- - - - -

(Opinion August 12, 2003, 5 Cir., 2003, \_\_\_\_\_F.3d\_\_\_\_\_)  
(Opinion on Remand from U.S. Supreme Court March 1, 2006, 5 Cir.,  
2006, \_\_\_\_\_F.3d\_\_\_\_\_)

BEFORE: JONES, Chief Judge, KING, JOLLY, HIGGINBOTHAM, DAVIS,  
SMITH, WIENER, BARKSDALE, GARZA, DeMOSS, BENAVIDES,  
STEWART, DENNIS, CLEMENT, PRADO and OWEN, Circuit  
Judges.

BY THE COURT:

A majority of judges in active service having  
determined, on the Court's own motion, to rehear this case en  
banc,

IT IS ORDERED that this cause shall be reheard by the  
Court en banc with oral argument on a date hereafter to be fixed.  
The Clerk will specify a briefing schedule for the filing of  
supplemental briefs.