

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20669
Summary Calendar

JOHNNY DWAYNE STATEN,

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 Southern District of Texas
USDC No. H-99-CV-879

November 2, 2000

Before DAVIS, JONES, and DeMOSS, Circuit Judges.

PER CURIAM:*

Texas prisoner Johnny Dwayne Staten, #682286, moves this court for a certificate of appealability (COA) to appeal the dismissal, without prejudice, of his 28 U.S.C. § 2254 petition. The magistrate judge dismissed Staten's instant § 2254 petition "as improvidently filed under the Fifth Circuit's sanction and bar order" in Staten v. Pruitt, No. 97-10396 (5th Cir. Apr. 15, 1998)(unpublished).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

When the district court denies federal habeas relief on procedural grounds and does not reach the underlying constitutional claim, "a COA should issue [if] the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 120 S. Ct. 1595, 1604 (2000).

In In re: Staten, No. 99-00034 (5th Cir. Jun. 2, 1999) (unpublished), this court determined that the prior sanction order relied upon by the magistrate judge to dismiss the instant action did not bar Staten from filing a notice of appeal in a § 2254 proceeding. Accordingly, Staten's motion for a COA is GRANTED; Staten's motion for leave to proceed in forma pauperis on appeal is GRANTED; and the case is VACATED and REMANDED for further proceedings. All other remaining motions and all other requests for relief are DENIED.