

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40328
Summary Calendar

DEVIN PAUL COLE,

Petitioner-Appellant,

versus

JANIE COCKRELL, 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. 1:00-CV-355
- - - - -

December 19, 2001

Before DeMOSS, PARKER and DENNIS, Circuit Judges.

PER CURIAM:*

Devin Paul Cole, Texas prisoner #582965, has requested a certificate of appealability ("COA") in order to appeal the dismissal of his federal habeas corpus application filed pursuant to 28 U.S.C. § 2254. He has made a substantial showing of the denial of a constitutional right regarding whether the lack of a separate hearing prior to the revocation of his parole in September 1999 violated his federal due process rights. See Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972); see also 28 U.S.C. § 2253(c)(2).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

As Cole had filed a previous federal habeas corpus application challenging his May 1999 revocation hearing, the district court dismissed his instant constitutional claims as repetitive. However, Cole's instant habeas corpus application challenged his September 1999 revocation. Accordingly, jurists of reason would find it debatable whether the district court's dismissal of his constitutional claims as repetitive was correct. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). The motion for COA is GRANTED, the district court's judgment is VACATED, and this case is REMANDED to the district court for consideration of Cole's claims pertaining to his September 1999 revocation. Cole's motion for appointment of counsel to argue his COA motion is DENIED AS UNNECESSARY.

COA GRANTED; MOTION FOR APPOINTMENT OF COUNSEL DENIED;
JUDGMENT VACATED; REMANDED.