

May 8, 2003

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 02-11271
Summary Calendar

CECIL LEE RUSSELL,

Petitioner-Appellant,

versus

STATE OF TEXAS,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:01-MC-12

Before SMITH, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:*

Cecil Lee Russell asks this court for a certificate of appealability (COA) from the district court's denial of a motion construed by the district court as a "Motion for Leave to File a Petition for Mandamus" that was in substance merely a motion for a hearing on Russell's petition for leave to file a federal habeas petition under 28 U.S.C. § 2254. Russell's notice of appeal pertained only to the denial of his "mandamus" motion for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a hearing. The denial of that motion was not a final or otherwise appealable order. See Briargrove Shopping Ctr. Joint Venture v. Pilgrim Enter., 170 F.3d 536, 538-39 (5th Cir. 1999). This court therefore lacks jurisdiction to consider Russell's appeal.

Russell's motion for a COA is DENIED as unnecessary, and his appeal is DISMISSED for lack of subject-matter jurisdiction.

COA DENIED; APPEAL DISMISSED.