

July 14, 2003

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 02-41628

HENRY LEE SANDERS,

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. 9:02-CV-135

Before JONES, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

Henry Lee Sanders, Texas inmate no. 666939, seeks a certificate of appealability (COA) following the dismissal of his 28 U.S.C. § 2254 application for a writ of habeas corpus. He is challenging a prison disciplinary conviction for failing to obey an order and being in an unauthorized place.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district judge is married to the magistrate judge, and he therefore should have recused himself under 28 U.S.C. § 455(a) so that another judge could review the magistrate judge's report and recommendation. See Jones v. Patrick, No. 02-40846 (5th Cir. Nov. 14, 2002) (unpublished) (same magistrate judge and same district judge as in present case).

A COA must be issued before this appeal may proceed. FED. R. APP. P. 22(b)(1). Accordingly, we GRANT a COA on the recusal issue, VACATE the judgment, and REMAND the case with directions that the magistrate judge's report and recommendation be considered by another district judge. See Jones at 2-3.

COA **GRANTED**; JUDGMENT **VACATED**; CASE **REMANDED**.