

February 11, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10858
USDC No. 2:03-CV-186

GERMAN RODRIGUEZ,

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

Before JOLLY, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:*

German Rodriguez, Texas prisoner # 748574, seeks a certificate of appealability ("COA") to appeal the district court's dismissal of his 28 U.S.C. § 2254 petition for failure to pay the required filing fee. To obtain a COA, Rodriguez must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). When the district court has denied relief on procedural grounds without reaching the underlying constitutional issue, a COA should be granted if the petitioner shows that jurists of reason would find it debatable

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

whether the petition stated a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Rodriguez contends that COA should be granted and his case reinstated because he complied with the magistrate judge's report requiring him to provide proof that he timely requested the disbursement of funds for the filing fee. He urges that the failure to pay the required fee was not attributable to him but was caused by prison officials' unexplained delay in processing his request.

The record supports Rodriguez's assertion that he timely requested payment of the filing fee and that he submitted documentation evidencing such request to the district court during the time prescribed by the magistrate judge.** Rodriguez has made a colorable showing that reasonable jurists would find it debatable whether the district court erred in dismissing his petition for failure to pay the required filing fee. Rodriguez also has at least facially stated a claim under the Due Process Clause. Accordingly, COA is GRANTED, the district court's judgment is VACATED, and the case is REMANDED for further proceedings. See Slack, 529 U.S. at 484.

** In any event, it is clear that Rodriguez qualifies for pauper status now, and he is proceeding IFP in this appeal.