

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

June 27, 2008

No. 07-10796
Summary Calendar

Charles R. Fulbruge III
Clerk

JESSIE CALVIN HAWKINS

Petitioner-Appellee

v.

NATHANIEL QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

Respondent-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CV-830

Before SMITH, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:*

Jesse Hawkins, Texas prisoner # 287280, was convicted of aggravated robbery and sentenced to serve 25 years in prison. Hawkins filed the instant 28 U.S.C. § 2254 petition to raise claims concerning credit for time served while on parole or mandatory supervision, and the district court dismissed the petition without prejudice for want of exhaustion. The respondent appeals the district court's judgment and argues that the dismissal should have been with prejudice.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 respondent argues that the exhaustion requirement should be flexibly applied and that, because Hawkins's § 2254 petition was untimely and lacked merit, the district court should have dismissed it with prejudice.

We review the district court's decision to dismiss the petition without prejudice for an abuse of discretion. See *Horsley v. Johnson*, 197 F.3d 134, 136 (5th Cir. 1999). Our review of the record does not show that the district court's decision to dismiss Hawkins's petition without prejudice was based on a legal error or a clearly erroneous view of the pertinent facts. See *Rodriguez v. Johnson*, 104 F.3d 694, 696 (5th Cir. 1997). Consequently, the district court did not abuse its discretion when it decided to dismiss Hawkins's § 2254 petition without prejudice. See *id.*

The judgment of the district court is **AFFIRMED**.