

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-10682

United States Court of Appeals
Fifth Circuit

FILED

January 13, 2014

Lyle W. Cayce
Clerk

VINTON DERRICK CUMMINGS,

Petitioner-Appellant

v.

WILLIAM STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:12-CV-473

Before DAVIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Vinton Derrick Cummings, Texas prisoner # 1612718, moves for a certificate of appealability (COA) to appeal the district court's denial of his motion to reinstate his 28 U.S.C. § 2254 petition challenging his murder conviction. Cummings had previously moved to withdraw this petition, and the district court construed Cummings's motion as a motion for voluntary dismissal and granted it, dismissing the case without prejudice. The district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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court's denial of the motion to reinstate is not a "final order in a habeas corpus proceeding." 28 U.S.C. § 2253(c)(1)(A); *see Long v. Bd. of Pardons and Paroles of Texas*, 725 F.2d 306, 306-07 (5th Cir. 1984). Accordingly, Cummings's COA motion is DENIED as unnecessary.

Before this court, Cummings contends that he was entitled to reinstate his previous § 2254 petition because he withdrew the pleading based on his need to exhaust a new claim for relief and because the dismissal of the petition without prejudice should not affect his rights. He has not shown that the district court abused its discretion in denying his motion. *See Aucoin v. K-Mart Apparel Fashion Corp.*, 943 F.2d 6, 8-9 (5th Cir. 1991). "A voluntary dismissal without prejudice leaves the situation as if the action had never been filed." *Long*, 725 F.2d at 307. Thus, the district court was not required to reinstate the dismissed petition. *See id.* Consequently, the district court's order is AFFIRMED.