

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

No. 16-20304
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 18, 2018

Lyle W. Cayce
Clerk

ISAIAS SANTOS, III,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CV-1003

Before REAVLEY, GRAVES, and HO, Circuit Judges.

PER CURIAM:*

Isaias Santos, III, Texas prisoner # 1855998, appeals the dismissal of his 28 U.S.C. § 2254 application, which the district court held was unexhausted due to the pendency of his state habeas corpus application. We review that dismissal de novo. *Emerson v. Johnson*, 243 F.3d 931, 932 (5th Cir. 2001). Prior to that dismissal, Santos advised the district court that his state habeas

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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corpus application had been denied and was no longer pending. As conceded by the respondent, Santos exhausted his claims properly for purposes of § 2254(b)(1)(A) before the district court dismissed them as unexhausted. A remand is appropriate so that the district court can consider Santos's § 2254 application in the first instance with the benefit of the state court's denial of his state habeas corpus application.

Accordingly, and with the agreement of the State, we VACATE the district court's judgment and REMAND for further proceedings. We express no opinion on the ultimate disposition of Santos's § 2254 application.