

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-2740

(Summary Calendar)

SAMMY ESPINOZA RODRIGUEZ,

Petitioner-Appellant,

versus

JAMES A. COLLINS, Director
Texas Department of Criminal
Justice, Institutional Division,

Respondent-Appellee.

Appeal from the United States District Court
For the Southern District of Texas
CA H 92 706

July 21, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Rodriguez was convicted in state court of aggravated robbery, and the jury assessed punishment at life imprisonment. The conviction and sentence were affirmed on direct appeal, and Rodriguez's petition for state habeas relief was denied. Rodriguez then filed a petition for habeas corpus relief in the federal district court pursuant to 28 U.S.C. § 2254 (1988). The district court found that Rodriguez had failed to exhaust his state remedies

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

with respect to his claims of improper prosecutorial argument and denial of his right to confront witnesses against him. The district court dismissed the petition without prejudice and granted Rodriguez's request for a certificate of probable cause to appeal.

The district court's only grounds for dismissal was its finding that Rodriguez failed to exhaust state remedies. If in fact Rodriguez did not exhaust his state court remedies, dismissal of his federal habeas petition was required. *See Rose v. Lundy*, 455 U.S. 509, 522, 102 S. Ct. 1198, 1205, 71 L. Ed. 2d 379 (1982) (holding that district court must dismiss habeas petitions containing unexhausted claims). We need not reach the issue, however, for Rodriguez fails to argue that he exhausted his state remedies.¹ At most, Rodriguez might be understood to request a waiver of the exhaustion requirement on the grounds that there existed circumstances rendering the state habeas procedure ineffective to protect his rights. *Cf.* 28 U.S.C. § 2254(b) (1988) (identifying deficiencies in state habeas procedure as sufficient grounds for writ). Although the Court recognizes the need to construe the briefs of pro se plaintiffs as liberally as possible, *see Barksdale v. King*, 699 F.2d 744, 746 (5th Cir. 1983), we require something more than unsupported conclusory allegations. *See Fed. R. App. P. 28(a)(5)* (requiring that appellant's brief contain an argument). As Rodriguez offers nothing more, his claim is waived. *Friou v. Phillips Petroleum Co.*, 948 F.2d 972, 974 (5th

¹ With one minor exception, the whole of appellant's brief is devoted to attacking the merits of his conviction.

Cir. 1991) ("A party who inadequately briefs an issue is considered to have abandoned the claim."); *Morrison v. City of Baton Rouge*, 761 F.2d 242, 244 (5th Cir. 1985) (merely stating issue insufficient for purposes of appellate review). Because Rodriguez has not shown that the district court erred by dismissing his petition for failure to exhaust his state remedies, we **AFFIRM.**