

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5064  
USDC No. 93-CV-479

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GARY BOUDREAUX,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden,  
Louisiana State Penitentiary,

Respondent-Appellee.

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Appeal from the United States District Court for the  
Western District of Louisiana

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(December 1, 1993)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

BY THE COURT:

Treating the notice of appeal as a request for a certificate of probable cause, (CPC), *see* FED. R. APP. P. 22(b), IT IS ORDERED that the request is GRANTED, and the judgment is VACATED, and the case is REMANDED to the district court for further consideration. There are documents in the record that appear to indicate that Boudreaux has exhausted his state court remedies by presenting his claims on habeas review to the Louisiana Supreme Court. There are also documents that are referred to but are not contained in the record that may support the finding that he exhausted his remedies.

The magistrate judge (and, apparently, the district court) focused only on the claims Boudreaux raised on direct appeal. On remand, the magistrate judge or district court should specifically address whether Boudreaux's state habeas proceedings have exhausted his state remedies (to the extent not exhausted by his direct appeal). If not, the court may dismiss for failure to exhaust (subject to review by this court should Boudreaux appeal). Otherwise, the district court should address the merits of Boudreaux's claims.