

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7422  
Conference Calendar

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JAMES C. METCALF,

Petitioner-Appellant,

versus

EDWARD M. HARGETT, Superintendent,  
Mississippi State Penitentiary, ET AL.,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. CA 93-130-S-O

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October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges

PER CURIAM:\*

James C. Metcalf was convicted of uttering forgery and sentenced to fifteen years imprisonment. His direct appeal of that conviction is currently pending before the Mississippi State Supreme Court. He filed a petition for a federal writ of habeas corpus challenging the constitutionality of his conviction and a motion to waive the requirement to exhaust state remedies. The district court determined that Metcalf had not exhausted his state remedies and dismissed the petition without prejudice. The district court also denied the motion to dispense with the exhaustion requirement.

In his brief on appeal Metcalf addresses the merits of his claim that he was denied due process because the state trial court failed to order a competency hearing but does not challenge

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\* Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the district court's determination that he failed to exhaust his state remedies. Because Metcalf failed to raise or brief the exhaustion issue, the issue is considered abandoned. See Yohey v. Collins, 985 F.2d 224, 224-25 (5th Cir. 1993). The district court's judgment is AFFIRMED.

Metcalf has filed a motion to stay the execution of his state sentence pending appeal and a motion to transfer to a place near the Fifth Circuit Court of Appeals pending appeal. These motions are DENIED as moot.