

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10189

JAMES EDWARD CLAYTON,

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 Northern District of Texas
(94-CV-37)

On Application for Certificate of
Probable Cause or, in the Alternative,
Petition for Writ of Mandamus,
and Motion for Stay of Execution

(March 10, 1994

Before KING, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

I.

James Edward Clayton is to be executed by the State of Texas shortly after 12:00 a.m. on March 17, 1994. He has filed a motion for leave to proceed *in forma pauperis*, an application for a

¹ 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 Pursuant to that rule, the court has determined that this opinion should not be published.

certificate of probable cause or, in the alternative, a petition for writ of mandamus, and a motion for a stay of execution. He has not filed a petition for a writ of habeas corpus in either state or federal court.

II.

Clayton's capital murder conviction was affirmed by the Texas Court of Criminal Appeals in January 1993. **Clayton v. State**, No. 70,764 (Tex. Crim. App. Jan. 27, 1993). His motion for rehearing was denied that March. On October 4, 1993, the Supreme Court of the United States denied his petition for writ of certiorari. **Clayton v. Texas**, ___ U.S. ___, 114 S. Ct. 157 (1993).

At a hearing on December 1, 1993, the state trial court agreed to give the Texas Resource Center until January 28, 1994, to recruit counsel to represent Clayton in post-conviction proceedings. On February 2, 1994, no attorney having been recruited for Clayton, the trial court set an execution date of March 17.

On February 24, Clayton filed a motion for a stay of execution and request for appointment of counsel with the state trial court and the Texas Court of Criminal Appeals. The trial court denied the motion that same day; the Court of Criminal Appeals, on March 1.

Also on February 24, Clayton filed a motion for stay of execution and request for appointment of counsel in the United States District Court for the Northern District of Texas. The requested relief was denied the next day. That same day, Clayton

filed a motion for stay of execution pending appeal to this court, which the district court denied on February 28. It also denied Clayton's application for a certificate of probable cause.

Clayton filed a notice of appeal from the ruling denying a stay of execution and refusing to appoint counsel. He has also filed with this court a motion to proceed *in forma pauperis*, an application for a certificate of probable cause or, in the alternative, petition for writ of mandamus, and a motion for stay of execution, with supporting brief.²

III.

We grant leave to proceed *in forma pauperis*, but deny all other requested relief, for the reasons stated in **McFarland v. Collins**, 7 F.3d 47 (5th Cir.), *cert. granted in part*, ___ U.S. ___, 114 S. Ct. 544 (1993); **Moreno v. Collins**, No. 94-50026 (5th Cir. Jan. 17, 1994) (unpublished) (attached), *stay granted*, No. A-576 (93-7494) (U.S. Jan. 18, 1994); and **Joiner v. Collins**, No. 94-10083 (5th Cir. Feb. 3, 1994) (unpublished) (attached), *stay granted*, No. A-647 (93-7739) (U.S. Feb. 3, 1994).

² In his brief, Clayton notes that his contentions are "quite similar" to those made by the petitioners in **Moreno v. Collins**, No. 94-50026 (5th Cir. Jan. 17, 1994) (unpublished), and **Joiner v. Collins**, No. 94-10083 (5th Cir. Feb. 3, 1994) (unpublished), but that he has briefed them again to preserve the record for appeal. In fact, Clayton's application for CPC, mandamus, and stay of execution erroneously refers to Joiner as the petitioner.