

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10189

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JAMES EDWARD CLAYTON,

Petitioner-Appellant,

versus

WAYNE SCOTT,  
Director, Texas Department  
of Criminal Justice,  
Institutional Division,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
(94-CV-37)

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ON REMAND FROM THE  
SUPREME COURT OF THE UNITED STATES

(September 23, 1994)

Before KING, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

Our denial of Clayton's application for certificate of probable cause or, in the alternative, petition for writ of mandamus, and motion for stay of execution, has been vacated by the Supreme Court of the United States, *Clayton v. Scott*, \_\_\_ U.S. \_\_\_,

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 Pursuant to that rule, the court has determined that this opinion should not be published.

114 S. Ct. 2779 (1994), and remanded to this court.<sup>2</sup> We **REMAND** the case to the district court for further consideration in light of ***McFarland v. Scott***, 512 U.S. \_\_\_, 114 S. Ct. 2568 (1994).

**REMANDED.**

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<sup>2</sup> We granted leave to proceed *in forma pauperis*.