

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-50117
Summary Calendar

KIRK WAYNE MCBRIDE,

Petitioner-Appellant,

VERSUS

WAYNE SCOTT, DIRECTOR OF TDC, ET AL.,

Respondents-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(SA 93 CV 58)

(March 16, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant, Kirk Wayne McBride ("McBride"), is currently incarcerated pending retrial in a Texas state district court pursuant to the decision of a Texas appellate court which reversed his convictions from a previous trial because of the erroneous admission of certain evidence. In this proceeding McBride appeals

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 order of the federal district court which dismissed without prejudice his pretrial petition for a writ of habeas corpus. We affirm the order of dismissal because our review of the record reveals that petitioner's two insufficiency of the evidence claims have not been presented to the Texas court of criminal appeals. See Richardson v. Procnier, 762 F.2d 429, 432 (5th Cir. 1985). Containing two unexhausted claims, the district court properly dismissed the entire petition for failure to exhaust state remedies. Rose v. Lundy, 455 U.S. 509, 522 (1982)¹

AFFIRMED.

¹The appellant's attack on the trial court's denial of his motion to stay the state court proceedings lacks merit because it does not show that he will suffer irreparable injury. Younger v. Harris, 401 U.S. 37, 46; moreover, such attack becomes moot given our resolution of this appeal.