

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-40079  
Summary Calendar

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JUAN GARCIA MARTINEZ,

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 Southern District of Texas  
USDC No. CA-B-91-194  
- - - - -

February 9, 1996

Before JOLLY, JONES and STEWART, Circuit Judges.

PER CURIAM:\*

Juan Garcia Martinez moves this Court for a certificate of probable cause (CPC).

Martinez argues that he should have been appointed counsel for the evidentiary hearing conducted by the district court to determine whether his trial counsel failed to file a timely notice of appeal.

Appointment of counsel is mandatory if a district court determines that an evidentiary hearing is required and a petitioner qualifies for appointment under 18 U.S.C. § 3006A.

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Lamb v. Estelle, 667 F.2d 492, 496-97 (5th Cir. 1982). As the district court had already adjudged him a pauper, Martinez was qualified under § 3006A(g). Therefore, the district court should have appointed counsel for Martinez. See Bell v. Watkins, 692 F.2d 999, 1014 (5th Cir. 1982), cert. denied, 464 U.S. 843 (1983).

Martinez's motion for CPC is GRANTED. The judgment of the district court is VACATED and the case REMANDED for the district court to conduct an evidentiary hearing with Martinez represented by counsel.