

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50153
Summary Calendar

FERNANDO VALLES,

Petitioner-Appellant

versus

WAYNE SCOTT, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court for the
Western District of Texas

(No. DR 93-CA-8)

(August 8, 1995)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant Fernando Valles appeals from the judgment of the district court which granted him only partial relief in his writ of habeas corpus proceeding brought pursuant to 28 U.S.C. § 2254. We

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

AFFIRM for the following reasons:

We find no conflict in petitioner being represented by appointed habeas counsel, the Federal Public Defender (FPD) for the Western District of Texas, arising from the fact that the FPD employs an investigator who had previously served as a peace officer and who had been involved with the arrest of the applicant. Moreover, any appearance of impropriety that might be occasioned by such representation was adequately dispelled by the magistrate's order that the investigator be screened from the case. No conflict or harm has been shown, thus no waiver hearing was required. See United States v. Trevino, 992 F.2d 64 (5th Cir. 1993). AFFIRMED.¹

¹ Applicant's due process claim based on the destruction of the court reporter's notes was specifically waived in the district court in order to prevent dismissal for failure to exhaust state remedies. The waived issue was not before the district court and not reviewable on appeal. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991) (internal quotations omitted).