

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50728
Summary Calendar

JOHN ROBERT MORGAN, SR.,

Petitioner-Appellant,

versus

WAYNE SCOTT, DIRECTOR, TEXAS DEPARTMENT
OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION;
DAN MORALES, Attorney General,

Respondents-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. 95-CV-24
- - - - -

February 22, 1996

Before HIGGINBOTHAM, DUHE' and BENAVIDES, Circuit Judges.

PER CURIAM:*

John Robert Morgan, Sr., proceeding pro se, appeals the denial of his petition for writ of habeas corpus. We have reviewed the record and the district court's order and, for essentially the same reasons as the district court, find no reversible error regarding Morgan's contention that his trial counsel was ineffective for failing to call Morgan's son, John Morgan, Jr., as a witness.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Morgan also argues that counsel was ineffective by failing to ensure that Morgan was present during the entire voir dire. The state appellate court found that Morgan was present for the actual voir dire proceeding, and Morgan has not shown that the finding is not entitled to a presumption of correctness. Sumner v. Mata, 449 U.S. 539, 546-47 (1981). Further, Morgan has failed to demonstrate how counsel's performance in this case caused the result of the trial to be unreliable or rendered the proceeding fundamentally unfair. See Lockhart v. Fretwell, 113 S. Ct. 838, 844 (1993). Such failure defeats Morgan's claim of ineffective assistance of counsel on this ground. See Strickland v. Washington, 466 U.S. 668, 687 (1984).

AFFIRMED.