

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-60123  
Conference Calendar

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JAMES G. MARTIN,

Petitioner-Appellant,

versus

EDWARD HARGETT, Superintendent,  
Mississippi State Penitentiary and  
MICHAEL C. MOORE, Attorney General,  
State of Mississippi,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 1:95CV12D-D  
- - - - -

August 23, 1995

Before KING, JOLLY, and WIENER, Circuit Judges.

PER CURIAM:\*

James G. Martin, a Mississippi state prisoner, appeals the dismissal of his 28 U.S.C. § 2254 petition, without prejudice, for failure to exhaust state remedies. A fundamental prerequisite to federal habeas corpus relief is the exhaustion of all claims in state court prior to requesting federal collateral

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

relief. Picard v. Connor, 404 U.S. 270, 275 (1971). The district court may raise the exhaustion requirement sua sponte. McGee v. Estelle, 722 F.2d 1206, 1208 (5th Cir. 1984) (en banc). The exhaustion requirement demands that an applicant "fairly apprise the highest court of his state of the federal rights which were allegedly violated" and to do so "in a procedurally correct manner." Deters v. Collins, 985 F.2d 789, 795 (5th Cir. 1993). A federal habeas petition should be dismissed if state remedies have not been exhausted as to all of the federal claims. Rose v. Lundy, 455 U.S. 509, 519 (1982).

Martin does not dispute that motions for new trial are still pending in the Circuit Court of Alcorn, Mississippi, and that he did not file a state court appeal of his conviction or a petition for state post-conviction relief. Because Martin's § 2254 claims have not been raised in any Mississippi state court, the district court did not err in dismissing Martin's petition for failure to exhaust state court remedies. Martin's request for the appointment of counsel is DENIED.

AFFIRMED.