

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-11199
(Summary Calendar)

JAMES EDWARD HIGHTOWER,

Petitioner-Appellant,

versus

GARY L. JOHNSON, Director,
Texas Department of Criminal
Justice, Institutional Division,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:96-CV-913)

April 15, 1997

Before HIGGINBOTHAM, WIENER and BENAVIDES, Circuit Judges.

BY THE COURT:*

ON REHEARING

Following execution of our order granting respondent-appellee's motion to expand the record on appeal to include state

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

court records, we granted respondent-appellee's petition for panel rehearing. We have now revisited the record as thus expanded and considered it in light of respondent-appellee's said motion and petition, as well as petitioner-appellant's motion for Certificate of Probable Cause, which we construed and continue to construe as a motion for a Certificate of Appealability (COA). Our review and the now-complete record on appeal satisfies us that our original grant of COA was erroneous, as was our vacatur of the judgment of the district court and our remand to that court with instructions, particularly in light of the revelation that the district court had the state court records before it when it denied COA to petitioner-appellant.

We therefore vacate and withdraw our judgment filed February 12, 1997, thereby revoking our grant of COA to petitioner-appellant, our vacatur of the judgment of the district court, and our remand to that court; and we now affirm the original judgment of the district court in all respects.

AFFIRMED.