

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60437
Summary Calendar

JIM NEAL,

Petitioner-Appellant,

versus

ROGER COOK,

Respondent-Appellee.

Appeal from the United States District Court
For the Southern District of Mississippi
(4:96-CV-55-LN)

October 29, 1996

Before POLITZ, Chief Judge, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Jim Neal, a Mississippi state prisoner, appeals the dismissal of his petition for habeas corpus for failure to exhaust state court remedies. Neal has filed a motion seeking permission to file a supplemental brief. That motion is granted.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Since the appeal was filed, the Mississippi Supreme Court has rendered a decision on Neal's state habeas corpus application. This moots Neal's contention that the district court should have excused his failure to exhaust because of inordinate delay. The district court's determination that Neal had failed to exhaust state remedies was correct at the time it was rendered. Whether all available state remedies have been exhausted cannot be determined from this record. If they have, Neal may resubmit an appropriate application for habeas corpus relief. If they have not, Neal must do so before further proceedings may be had in federal court.

Accordingly, we VACATE and REMAND in order that the district court may review the intervening decision by the Mississippi Supreme Court, giving it such effect as it finds appropriate.