

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-41465  
Summary Calendar

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THADDEUS EVANS BURNS,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
INSTITUTIONAL DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. G-96-CV-736  
- - - - -

December 10, 1998

Before KING, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Thaddeus Evans Burns, Texas prisoner # 562561, appeals the district court's dismissal of his petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. He argues that the trial court's erroneous inclusion of the mental state of recklessness in its jury instruction regarding aggravated assault, the crime of conviction, deprived him of a fair trial.

We have reviewed the federal and state records and the briefs submitted by the parties and conclude that the jury

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

instruction was harmless error. See Harris v. Warden, Louisiana state Penitentiary, 152 F.3d 430, 434-36 (5th Cir. 1998).

Accordingly, the state appellate court's adjudication of the issue was not contrary to and did not result in an unreasonable application of federal law.

The district court's judgment is AFFIRMED.

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