

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-10053  
Conference Calendar

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RAY LOUIS JOHNSON,

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 Northern District of Texas  
USDC No. 3:97-CV-1603-P  
- - - - -

October 21, 1998

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:\*

Ray Louis Johnson, Texas prisoner # 683523, has appealed the district court's dismissal of his petition for habeas corpus as untimely under 28 U.S.C. § 2244(d)(1); nevertheless, Johnson failed to raise that issue in his initial appellate brief. The Respondent has moved the court to dismiss Johnson's appeal for his failure to preserve the issue. That motion is GRANTED. *Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993); *United*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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*States v. Prince*, 868 F.2d 1379, 1386 (5th Cir. 1989). The  
appeal is DISMISSED. 5TH CIR. R. 42.2.