

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-41551
Summary Calendar

HERBERT HERMAN FEIST,

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 Eastern District of Texas
USDC No. 1:97-CV-547

July 27, 1999

Before POLITZ, JOLLY, and STEWART, Circuit Judges.

PER CURIAM:*

Herbert Feist, Texas prisoner # 318012, requests a certificate of appealability (COA) to appeal the district court's denial of his motion to reinstate his 28 U.S.C. § 2254 federal habeas petition challenging post-conviction administrative action relating to his sentence.

In In Re: Feist, No. 98-41176 (5th Cir. Oct. 20, 1998)(three-judge order), this court found that Feist need not secure permission to file a habeas application "with respect to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

those issues challenging post-conviction, post-sentence administrative actions relating to his sentence." The district court denied Feist's motion to reinstate his habeas application because there was no record of the October 20, 1998, order. Although the district court was correct in noting that this order did not appear on the docket sheet related to the case number sub judice, requests for permission to file successive habeas applications carry their own appeal numbers and are not linked to district court case numbers. As the district court did not consider this court's order in denying Feist's motion to reinstate, this court has no choice but to find that error was committed. Accordingly, a COA is GRANTED as to Feist's single claim. See Sonnier v. Johnson, 161 F.3d 941, 945-46 (5th Cir. 1998).

Additionally, the district court's order denying Feist's motion to reinstate his § 2254 application is VACATED, and this matter is REMANDED to the district court for additional consideration in light of this court's order, In Re: Feist, No. 98-41176 (5th Cir. Oct. 20, 1998).

COA GRANTED; VACATED and REMANDED.