

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50339
Summary Calendar

ISAURO HERNANDEZ,

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 Western District of Texas
USDC No. SA-97-CV-650
- - - - -

February 22, 1999

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Isauro Hernandez, Texas prisoner # 633438, appeals the district court's denial of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Hernandez contends that he was subject to double jeopardy for his convictions and sentences for Aggravated Sexual Assault and Indecency with a Child.

Whether different statutes punish the same offense is determined by the standard announced in Blockburger v. United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States, 284 U.S. 299 (1932). Brown v. Ohio, 432 U.S. at 166.

The trial court considered Hernandez's habeas claim within his second state application for habeas relief. The court analyzed the elements of the two crimes for which Hernandez was convicted under Blockburger and concluded that each crime had a distinct element not contained in the other. The Texas Court of Criminal Appeals denied the writ without written order, implicitly adopting the lower court's decision. Because the state court did not rest its decision on a legal determination contrary to clearly established federal law, the district court did not err in denying the writ. The district court's judgment is AFFIRMED.