

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-50684  
Summary Calendar

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DOMINGO VALDEZ MARTINEZ,

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 Western District of Texas  
USDC No. A-96-CV-695  
- - - - -  
August 17, 1999

Before SMITH, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

On May 12, 1998, the district court entered an order denying petitioner's petition for habeas corpus under 28 U.S.C. § 2254. The order contains the analysis and the reasons for the decision and is therefore not a "separate document" judgment as required by Fed. R. Civ. P. 58. Respondent requests that the appeal be dismissed on the ground that the district court failed to comply with Rule 58.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Rule 58 applies to a habeas corpus proceeding. Townsend v. Lucas, 745 F.2d 933, 933-34 (5th Cir. 1984) (28 U.S.C. § 2254 case); see also Sassoon v. United States, 549 F.2d 983, 984 (5th Cir. 1977) (28 U.S.C. § 2255 motion); Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts. Although the separate document requirement is not jurisdictional and may be waived by the parties, Hanson v. Town of Flower Mound, 679 F.2d 497, 502 (5th Cir. 1982), the requirement must be enforced if an appellee objects to the district court's failure to enter judgment on a separate document. Seal v. Pipeline, Inc., 724 F.2d 1166, 1167 (5th Cir. 1984). Consequently, the APPEAL IS DISMISSED. Id. Petitioner may rectify the lack of a separate document judgment by a motion to the district court for entry of judgment. Petitioner may then appeal from the judgment within the time prescribed by Fed. R. Civ. P. 4(a)(1). See Townsend, 745 F.2d at 934. If a new appeal is taken after compliance with Rule 58, it may be submitted to this court without further briefing. Seal, 724 F.2d at 1167.

APPEAL DISMISSED.