

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-50191  
Summary Calendar

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RAMON RICARTE,

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. SA-98-CV-43  
- - - - -

May 19, 2000

Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Ramon Ricarte was granted a certificate of appealability (COA) to appeal the issues whether the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) improperly circumscribes federal habeas review of state court fact findings and conclusions of law and whether prosecution witness Fred Zain was a member of the prosecution team for purposes of imputing knowledge of Zain's alleged perjury to the prosecution. The motion by amicus curiae for leave to file out of time motion to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

file amicus curiae brief is DENIED. Appellee's motion to strike amicus curiae's motion to file out of time motion to file amicus brief is DENIED AS UNNECESSARY.

We have previously held that the AEDPA's standards of review are not unconstitutional. See Hughes v. Johnson, 191 F.3d 607, 612 (5th Cir. 1999); Corwin v. Johnson, 150 F.3d 467, 471-72 (5th Cir. 1998). We need not reach the issue whether Zain is a member of the prosecution team given the district court's ruling that Ricarte had failed to show that Zain's conclusion was factually inaccurate and that Zain's testimony was material to the outcome and given that Ricarte has not obtained a COA to appeal these issues. Accordingly, the judgment of the district court denying Ricarte's 28 U.S.C. § 2254 petition is AFFIRMED.