

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 14, 2009

No. 07-10975
Summary Calendar

Charles R. Fulbruge III
Clerk

TERRY GENE FREEMAN

Petitioner-Appellant

v.

NATHANIEL QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas
4:07-CV-176

Before HIGGINBOTHAM, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:*

Terry Gene Freeman appeals the district court's judgment dismissing without prejudice his application for a writ of habeas corpus challenging his 2003 conviction of aggravated sexual assault. The district court determined that Freeman had not exhausted his state remedies as to all of the claims raised in his habeas application. The respondent concedes that the district court erred in dismissing the entire habeas application without giving Freeman an opportunity

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to amend his habeas application to dismiss his unexhausted claims, an issue on which we have granted a COA.¹ The judgment is VACATED and the case is REMANDED for further proceedings. We neither make nor intimate any opinion as to which of Freeman's claims have been exhausted.

Freeman seeks to challenge this court's refusal to grant him Certificates of Appealability as to other issues, but we do not consider these claims, as he allowed the time within which he could make such challenges to lapse.²

¹ See *Rhines v. Weber*, 544 U.S. 269, 278 (2005).

² See 5TH CIR. R. 27.2; FED. R. APP. P. 40(a)(1).