

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

United States Court of Appeals
Fifth Circuit

FILED

November 30, 2009

No. 09-70035

Charles R. Fulbruge III
Clerk

BOBBY WAYNE WOODS,

Plaintiff - Appellant

v.

BRAD LIVINGSTON, Executive Director of Texas Department of Criminal
Justice,

Defendant - Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 09-cv-3780

Before DeMOSS, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Bobby Wayne Woods, an inmate of the Texas Department of Criminal Justice (“TDCJ”), is scheduled to be executed on December 3, 2009. In this appeal, Woods seeks a stay of execution in order to pursue a claim under 42 U.S.C. § 1983. Woods wishes to present video evidence of his mental impairment to support a petition for clemency. However, TDCJ officials have denied Woods’s requests to allow his lawyer to videotape him. In a written order, Judge

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Rosenthal dismissed Woods's § 1983 petition on the basis that venue was improper. Judge Rosenthal also reasoned that Woods's petition was "malicious" because it mimicked claims and sought relief which had been expressly rejected in a separate action before the Western District of Texas, namely, an injunction requiring that TDCJ officials allow Woods to be videotaped. *See* 28 U.S.C. § 1915(e)(2)(B)(i). For this reason, Judge Rosenthal denied Woods's motion for stay of execution.

Woods is not entitled to relief. He has previously presented evidence in state and federal tribunals that his mental impairment makes him ineligible for execution. *See Woods v. Quarterman*, 493 F.3d 580 (5th Cir. 2007). He timely filed a petition for clemency with the aid of appointed counsel. He fails to demonstrate that his inability to supplement the petition with video evidence entitles him to the equitable remedy of a stay of execution. *See Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004).

Woods's motion for stay of execution is DENIED. Woods's motion to proceed *in forma pauperis* is DENIED.