

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

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No. 13-40376  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 23, 2014

Lyle W. Cayce  
Clerk

CHAD ANDREW ISENBERGER,

Petitioner-Appellant

v.

WILLIAM STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 3:12-CV-113

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Before REAVLEY, JONES, and PRADO, Circuit Judges.

PER CURIAM:\*

Chad Andrew Isenberger, Texas prisoner # 1435299, is serving a 40-year sentence for aggravated sexual assault of a child. He filed a 28 U.S.C. § 2254 petition alleging he had received ineffective assistance of trial and appellate counsel. The district court considered and rejected all of Isenberger's claims except the one alleging that trial counsel was ineffective for putting

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Isenberger's wife Dorette on the stand to testify at his trial. The district court sua sponte dismissed that claim as unexhausted, and we granted a certificate of appealability on that ruling.

Isenberger asserts that he raised the claim regarding counsel's decision to have his wife testify in his state application for postconviction relief. The respondent agrees with Isenberger's assertion. The record indicates that the substance of Isenberger's claim was indeed raised before the state habeas court. Accordingly, the district court erred in dismissing the claim as unexhausted. *See Nobles v. Johnson*, 127 F.3d 409, 420 (5th Cir. 1997). Accordingly, we VACATE the district court's judgment dismissing Isenberger's claim of ineffective assistance as unexhausted, and we REMAND this matter for further proceedings on that sole claim.