

June 25, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 01-41389

MICHAEL WAYNE HALEY,

Petitioner-Appellee,

versus

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT
OF CRIMINAL JUSTICE, CORRECTIONAL
INSTITUTIONS DIVISION,

Respondent-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas

ON REMAND FROM THE UNITED STATES SUPREME COURT

Before DeMOSS, STEWART, and DENNIS, Circuit Judges.

CARL E. STEWART, Circuit Judge:

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, the United States Supreme Court by an Opinion entered May 3, 2004, in 124 S.Ct. 1847, 1852 (2004), held that a federal court faced with allegations of actual innocence, whether of the sentence or of the crime charged, must first address all nondefaulted claims of comparable relief and other grounds for cause to excuse the procedural default. Dretke and the State of Texas conceded before the Supreme Court

that Haley has a viable and significant ineffective assistance of counsel claim, success on the merits would give respondent all of the relief that he seeks, i.e., re-sentencing, and also would provide cause to excuse the procedural default of his sufficiency of the evidence claim, and that the State will not reincarcerate Haley during the pendency of his ineffective assistance of counsel claim. Accordingly, the judgment of this court, 306 F.3d 257, was vacated, and the case remanded for further proceedings consistent with its opinion. It is hereby ordered that this case be remanded to the district court for further proceedings to expeditiously resolve Haley's claim.