

July 20, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-60280  
Summary Calendar

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WILLIE JAMES HOLMES,

Petitioner-Appellant,

versus

DOLAN WALLER; WILKINSON COUNTY CORRECTIONAL CENTER; MISSISSIPPI  
DEPARTMENT OF CORRECTIONS; MIKE MOORE,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:03-CV-533  
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Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Willie James Holmes was convicted of conspiracy to commit murder and murder less than capital and sentenced to serve life in prison. Holmes filed the instant 28 U.S.C. § 2254 petition to challenge his convictions and sentences, and the district court denied the petition. When reviewing the denial of a habeas petition, this court analyzes the district court's findings of fact for clear error and its legal conclusions de novo. Martinez v. Johnson, 255 F.3d 229, 237 (5th Cir. 2001).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Holmes argues that his rights were violated at trial because the State proceeded on the theory that his coconspirator was the shooter, but the charges against this individual were later remanded. The respondents argue that Holmes's claims are procedurally barred. The respondents are correct. See Fairman v. Anderson, 188 F.3d 635, 641 (5th Cir. 1999); see also Stokes v. Anderson, 123 F.3d 858, 860-61 (5th Cir. 1997). Holmes has not shown cause and prejudice to excuse this default, nor has he shown that a manifest miscarriage of justice would occur if the merits of these claims were not considered. See Smith v. Johnson, 216 F.3d 521, 524 (5th Cir. 2000). The judgment of the district court is AFFIRMED.