

August 25, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-41686  
Summary Calendar

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DONALD STROMILE,

Petitioner-Appellant,

versus

JANIE COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, INSTITUTIONAL DIVISION

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(G-00-CV-594)  
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Before JOLLY, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Petitioner-Appellant Donald Stromile, Texas prisoner # 796587, appeals the district court's denial of his 28 U.S.C. § 2254 claim that the prosecutor's closing argument expressing a personal belief of Stromile's guilt violated his rights under the Due Process Clause of the Constitution. This is the same issue on which the district court granted a certificate of appealability (COA) after ruling that Stromile's petition was not time-barred under 28 U.S.C. § 2244(d)(1). We have subsequently rejected this basis for denying

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cockrell's time-bar argument. See Roberts v. Cockrell, 319 F.3d 690, 694-95 (5th Cir. 2003). A review of the record reveals that Stromile's petition is indeed time-barred, as the limitations period was not tolled by his state habeas application, filed after expiration of the period, or by his previous habeas petition, which he voluntarily dismissed. See Grooms v. Johnson, 208 F.3d 488, 489-90 (5th Cir. 1999); 28 U.S.C. § 2244(d). Denial of habeas relief may be — and is — affirmed on this alternate basis. See Bickford v. International Speedway Corp., 654 F.2d 1028, 1031 (5th Cir. 1981). We deny as moot Stromile's motion for appointment of counsel.

AFFIRMED; MOTION DENIED.