

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-11318  
Summary Calendar

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CHARLES LIONELL PENNESTON,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
INSTITUTIONAL DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:00-CV-831-P  
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July 6, 2001

Before JOLLY, DAVIS, and STEWART, Circuit Judges.

PER CURIAM:\*

Charles Lionell Penneston, Texas prisoner # 801608, was granted a motion for a certificate of appealability (COA) on the issue whether there was improper communication with certain female jurors during his trial that denied him due process. Penneston argues that he is entitled to habeas relief because there was improper contact between the victim's mother and several female jurors. Penneston attached an affidavit of Bea Campbell stating that she observed the victim's mother, who was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

carrying a photograph of the victim, coming down a stairway with several female jurors during a recess in the jury's deliberations. Because Penneston did not present any evidence to establish that the jurors were exposed to specific prejudicial evidence, witnesses, or other prejudicial facts which were not introduced as evidence at trial, he has not established that he was deprived of a fair trial or prejudiced by the alleged improper contact between the victim's mother and several female jurors. See Smith v. Phillips, 455 U.S. 209, 217-18 (1982). Penneston has not shown that the state court's decision denying this claim was "contrary to, or an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States." See 28 U.S.C. § 2254(d)(1). Penneston's motion for an evidentiary hearing is denied.

AFFIRMED; MOTION FOR EVIDENTIARY HEARING DENIED.