

**FILED**

August 17, 2004

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 04-60373  
Conference Calendar

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HERMAN STEVENSON, III,

Petitioner-Appellant,

versus

MICHAEL PETTIFORD,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:04-CV-65-RSU  
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Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:\*

Herman Stevenson, III, federal prisoner # 24905-034, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition for a writ of habeas corpus challenging his 1997 convictions for conspiracy to possess with intent to distribute cocaine, attempted possession with intent to distribute cocaine, and using and carrying a firearm during a drug-trafficking offense. Stevenson argues that he is actually and factually innocent, that counsel's failure to request a proper jury instruction

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

constituted ineffective assistance, that the district court should have invoked its mandamus power to correct these errors, and that the admission of a co-defendant's statement violated his Sixth Amendment confrontation rights.

Stevenson has not shown that his claims are based on a retroactively applicable Supreme Court decision which establishes that he may have been convicted of a nonexistent offense and that his claims were foreclosed by circuit law at the time when the claims should have been raised in his trial, appeal, or first § 2255 motion. See Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001).

Accordingly, the district court's judgment is AFFIRMED.