

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-9519
Conference Calendar

OTIS J. HOLMES,

Petitioner-Appellant,

versus

BRUCE N. LYNN, Secretary,
LOUISIANA DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS,

Respondent-Appellee.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-91-1620 "J"

- - - - -
(January 22, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Otis J. Holmes (Holmes) appeals the denial of habeas corpus relief. To prevail on an ineffective-assistance-of-counsel claim, a defendant must show deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Counsel does not provide ineffective assistance by declining to call a defendant to testify when it is reasonable to conclude that the testimony would be more damaging than beneficial. Hollenbeck v. Estelle,

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

672 F.2d 451, 453-54 (5th Cir.), cert. denied, 459 U.S. 1019 (1982).

Suspicion that one's spouse is engaged in an affair is not provocation sufficient to reduce murder to manslaughter under Louisiana law. See State v. Quinn, 526 So.2d 322, 323 (La. Ct. App. 1988), cert. denied, 538 So.2d 586 (La. 1989). Holmes's testimony that he killed his wife, Eula, because she was engaged in an affair therefore would have amounted to a confession of murder. Counsel's alleged refusal to allow Holmes to testify thus does not amount to ineffective assistance. Any deprivation of Holmes's constitutional right to testify is harmless error. Counsel's actions could not have contributed to the verdict. See Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

Complaints of uncalled witnesses rarely merit relief. Buckelew v. United States, 575 F.2d 515, 521 (5th Cir. 1978). The testimony Holmes asserts the unnamed witnesses would have offered would have added nothing to his defense. Even had Eula purchased a weapon and talked of killing Holmes, those facts are insufficient to raise self-defense as an issue.

The record in Holmes's case is adequate for disposition of his case. An evidentiary hearing thus is unnecessary. Joseph v. Butler, 838 F.2d 786, 788 (5th Cir. 1988); Rules Governing § 2254 Cases, Rule 8(a).

AFFIRMED.