IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3713
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JERRY JOE TUBBLEVILLE,

Defendant-Appellant.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-92-1458(CR-89-269-K)

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March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

The district court denied Jerry Joe Tubbleville's second 28 U.S.C. § 2255 motion under Rule 9(b) of the Rules Governing § 2255 Proceedings.

The decision to dismiss under Rule 9(b) lies within the sound discretion of the district court and will be reversed only for an abuse of discretion. See Saahir v. Collins, 956 F.2d 115, 120 (5th Cir. 1992). Unless a movant shows "cause" and "prejudice," the district court may not reach the merits of (1)

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* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

successive claims which raise identical grounds to those addressed on their merits and decided in a previous motion, or (2) new claims, not previously raised, which constitute an abuse of the writ. See Rule 9(b); Sawyer v. Whitley, ____U.S.____, 112 S.Ct. 2514, 2518, 120 L.Ed.2d 269 (1992) (§ 2254 case).

In district court, Tubbleville claimed that his failure to previously attack his conviction on two counts for "insufficiency of evidence" was caused by his lack of legal knowledge. Tubbleville does not challenge the district court's Rule 9(b) decision other than to state that "the prior motion did not challenge the issues that were presented in the second motion." A lack of legal knowledge does not constitute "cause" under McCleskey v. Zant, ____U.S.____, 111 S.Ct. 1454, 1466-70, 113 L.Ed.2d 517 (1991). Where the movant has not established cause, a federal court need not consider the issue of prejudice. Id. at 1474; see Saahir, 956 F.2d at 118 (citations omitted).

Even if a prisoner cannot meet McCleskey's "cause" and "prejudice" standard, a federal court may consider the merits of successive claims if the failure to consider them would constitute a "miscarriage of justice." Sawyer, 112 S.Ct. at 2518. Although the miscarriage-of-justice exception would allow successive claims to be considered if the movant has established sufficient evidence raising a claim of innocence, id. at 2519, Tubbleville does not assert his factual innocence.

For reasons set forth above, Tubbleville has not presented any argument that the district court abused its discretion when it denied his § 2255 motion. See Saahir, 956 F.2d at 117-19.

The order of the district court denying Tubbleville's § 2255 motion is AFFIRMED.