

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3808
Conference Calendar

WILLIE RICHARDSON,

Petitioner-Appellant,

versus

BRUCE LYNN, ET AL.,

Respondents-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-91-4084
- - - - -

May 6, 1993

Before POLITZ, Chief Judge,
HIGGINBOTHAM, and DEMOSS, Circuit Judges.

PER CURIAM:*

Willie Richardson is a state prisoner currently incarcerated at the Louisiana State Penitentiary at Angola, Louisiana. He contends that he was denied effective assistance of counsel because counsel failed to appeal his conviction.

Counsel's failure to file an appeal may constitute ineffective assistance. Evitts v. Lucey, 469 U.S. 387, 394 n.6, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). Counsel's deficient performance on appeal may also constitute ineffective assistance.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Lombard v. Lynaugh, 868 F.2d 1475, 1480 (5th Cir. 1989). In this case, however, Richardson, Richardson's family, and Richardson's counsel made the strategic decision to pursue a pardon rather than an appeal. The lingering issue is whether counsel's advice not to pursue an appeal constituted deficient performance.

The Supreme Court in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), set out the following two-part test for determining whether a petitioner has been denied the effective assistance of counsel--(1) the petitioner must show that his counsel's performance was deficient; and (2) the petitioner must show that the counsel's deficient performance prejudiced his defense. Id. at 687; see also Lockhart v. Fretwell, 1993 U.S. LEXIS 1016, *10 (January 25, 1993).

To satisfy the first prong of the test, the petitioner must show that counsel's actions fell below an objective standard of reasonable professional assistance. Bates v. Blackburn, 805 F.2d 569, 577 (5th Cir. 1986), cert. denied, 482 U.S. 916 (1987). In determining whether counsel's actions fall below that standard, federal courts should recognize that counsel is strongly presumed to have rendered adequate assistance and to have made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 689.

The transcript of the State Evidentiary hearing of 20 March 1972 indicates that Richardson's counsel testified that he told Richardson and his mother of the right to appeal; however, he advised them that there was no good basis of appeal. Richardson's counsel testified that "it was decided not to take

an appeal." Counsel recommended instead that Richardson take the case to the Pardon Board. Counsel testified that the family seemed satisfied with the advice and no one told him to take an appeal. Counsel was asked to take the matter before the Pardon Board, and he did so without success. Counsel testified that if there would have been any basis for an appeal, he would have recommended an appeal and would have taken the appeal. The transcript reflects that Richardson's case was presented to the Pardon Board, as counsel suggested.

Richardson asserts that the pursuit of the pardon did not relieve Counsel of the "loyal duty to perfect the appeal." Counsel had no obligation to pursue an appeal that he deemed meritless. Polk County v. Dodson, 454 U.S. 312, 323, 102 S.Ct 445, 70 L.Ed.2d 509 (1981).

Richardson was not denied effective counsel. Richardson and his counsel pursued a pardon, rather than an appeal: this action arguably falls within the deference given to counsel's strategic decisions. Strickland, 466 U.S. at 689.

In any event, it is plain that Richardson fails the second prong of Strickland; he has shown no prejudice. Strickland, 466 U.S. 687.

The decision of the district court is AFFIRMED.