IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4476
Conference Calendar

HARRISON ROGERS,

Petitioner-Appellant,

versus

JAMES A. COLLINS, Director,
Texas Department of Criminal Justice,
Institutional Division,

Respondent-Appellee.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. CA6-89-183

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(January 22, 1993)

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

PER CURIAM:*

Harrison Rogers, Jr. filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming three separate violations of his due process rights. The district court correctly dismissed the second and third claims as abuses of the writ because Rogers did not show cause and prejudice for failing to raise those claims in his prior petition or show that failure to hear the claims would result in a miscarriage of justice.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Sawyer v. Whitley, ___ U.S. ___, 112 S.Ct. 2514, 2518-19, 120 L.Ed.2d 269 (1992). This cause-and-prejudice standard is the same as the standard applied in state procedural default cases. McCleskey v. Zant, ___ U.S. ___, 111 S.Ct. 1454, 1470, 113 L.Ed.2d 517 (1991); Woods v. Whitley, 933 F.2d 321, 323 (5th Cir. 1991). Rogers has not made any showing of cause other than to state that he is pro se and untrained in the law. This Court has held that pro se status is not relevant to determine if a factual or legal basis for a claim was unavailable to an inmate at the time of the first habeas petition. Saahir v. Collins, 956 F.2d 115, 118 (5th Cir. 1992). Absent a showing of cause, the Court need not examine the issue of prejudice. McCleskey, 111 S.Ct. at 1474.

With respect to the first claim, Rogers's argument is based on his contention that there is a substantive difference between something "knowingly and intentionally" done and something "intentionally and knowingly" done. Rogers concedes that had the indictment and the jury charge read "intentionally and knowingly," there would be no problem. See East v. State, 702 S.W.2d 606, 615-16 (Tex. Crim. App.), cert.denied, 474 U.S. 1000 (1985). In this case, the order of the words "knowingly" and "intentionally" made no difference to the meaning of either the indictment or the jury charge. This claim is without merit and the district court correctly dismissed it.

AFFIRMED.