IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4752
Conference Calendar

JIMMY WAYNE WHITFIELD,

Petitioner-Appellant,

versus

JAMES A. COLLINS, Director,
Texas Dept. 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. CA4-92-30
- - - - - - - - - - -
June 23, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Jimmy Wayne Whitfield, a state prisoner, appeals the district court's dismissal of his 28 U.S.C. § 2254 petition. Whitfield argues pro se that the indictment as amended deprived him of notice and his right to grand jury review of the modified count in violation of the Fifth Amendment.

Whitfield's reliance on the Fifth Amendment to show a right to indictment by a state's grand jury is misplaced. "The Fifth

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Amendment right to indictment by a grand jury was not incorporated by the Due Process Clause of the Fourteenth Amendment, and, accordingly, does not pertain to the states." Fields v. Soloff, 920 F.2d 1114, 1118 (2nd Cir. 1990). For this reason, "there is no federal constitutional right to be tried upon a grand jury indictment for a state offense." Cappetta v. Wainwright, 433 F.2d 1027, 1029 (5th Cir. 1970) (citation omitted).

The remainder of Whitfield's argument relates to the indictment's conformity with state law.

A defect in a state indictment is not a ground for habeas relief unless the indictment is so defective that the convicting court had no jurisdiction. Neal v. Texas, 870 F.2d 312, 316 (5th Cir. 1989). This Court looks to the state law charging the offense at issue to determine if the indictment was adequate to confer jurisdiction on the state court. Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993) (citation omitted).

When the Texas Court of Criminal Appeals refused to hear the direct appeal and denied a writ of habeas corpus sought on the ground that the indictment was insufficient, the court implicitly held that the indictment was sufficient. Alexander v. McCotter, 775 F.2d 595, 599 (5th Cir. 1985). If the highest court of the state has held, expressly or implicitly, that the indictment was sufficient under state law, our federal habeas inquiry is at an end. Id. For reasons set forth above, the district court's dismissal of Whitfield's §2254 petition is AFFIRMED.