

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9567
Conference Calendar

JOE STANDLEY,

Petitioner-Appellant,

versus

N. BURL CAIN and
RICHARD P. IEYOUB, Attorney
General, State of Louisiana,

Respondents-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 92-CV-1949-E
- - - - -
(November 1, 1993)

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

PER CURIAM:*

Joe Standley appeals the dismissal of his second federal habeas corpus petition for abuse of the writ. A claim raised for the first time in a successive federal habeas petition must be dismissed as an abuse of the writ unless the petitioner demonstrates "cause" for not raising the issue in the previous petition and "prejudice" if the court fails to consider the new issue. McCleskey v. Zant, 499 U.S. 467, ___, 111 S. Ct. 1454,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1468-70, 113 L. Ed. 2d 517 (1991); Saahir v. Collins, 956 F.2d 115, 118 (5th Cir. 1992). Standley does not contend on appeal that there was cause for his failure to raise the ineffective assistance of counsel issue in his first federal habeas petition. Instead, Standley argues for the first time that he is factually innocent.

There is a narrow exception to the cause and prejudice standard for cases involving a fundamental miscarriage of justice, i.e., where a "constitutional violation probably has caused the conviction of one innocent of the crime." McCleskey, 111 S. Ct. at 1470. Standley points to inconsistencies in the victim's identification testimony. Standley's argument goes to the weight of the witness' testimony and does not demonstrate his factual innocence.

AFFIRMED.