

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3335

TYRONE L. JACK,

Petitioner-Appellant,

versus

RICHARD P. IEYOUB,
Attorney General, State
of Louisiana

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(C.A. 93-700-E)

(February 25, 1994)

Before HIGGINBOTHAM and WIENER, Circuit Judges, and
KAUFMAN*, District Judge.

PER CURIAM:**

I.

In his first federal habeas corpus petition, Tyrone Jack had asserted that the state trial court had admitted an unduly suggestive identification and that his trial counsel was

*District Judge of the District of Maryland, sitting by designation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

ineffective because he had failed to move to suppress the evidence. We held that "[b]ecause of the overwhelming evidence of [Jack's] guilt in this case, any constitutional violation in admitting evidence of the unreliable identification was harmless error. For the same reason, [Jack] has not established a claim that the assistance of his trial counsel was ineffective."

In this, Jack's second habeas appeal, he argues that his counsel in the first habeas petition was ineffective. The district court found the argument meritless, reasoning that Jack "failed to raise a claim reviewable under 28 U.S.C. § 2254" because there is no constitutional right to counsel for a federal habeas petition. The court dismissed Jack's second petition. He filed a timely notice of appeal. We affirm.

II.

Jack seems to argue that the prior habeas court improperly denied relief because of errors made by habeas counsel, an argument couched in due process language but addressing the alleged ineffectiveness of habeas counsel. He states:

[A]lthough . . . he is challenging the constitutionality of his federal habeas corpus hearing under the due process clause . . . the underlying subject is still his state court trial, conviction and confinement. For had he received a fair and meaningful consideration of his claims, minus counsel's error, the writ of habeas corpus [sic] would have . . . been granted . . .

Any ineffectiveness of habeas counsel does not relate to the validity of the underlying state court conviction. Ineffective assistance of counsel in the first habeas proceeding cannot form

the basis for subsequent habeas relief. Taylor v. Maggio, 727 F.2d 341, 348 (5th Cir. 1984).

Jack also appears to allege that if counsel is appointed to represent a party in a habeas proceeding, then he should be effective. In other words, although there is no constitutional right to counsel in habeas proceedings, if such counsel is appointed, then any ineffective representation should be allowed to form the basis of subsequent habeas relief. The U.S. Supreme Court, however, has held that because there is no constitutional right to counsel in a habeas corpus proceeding, there is no corresponding claim for relief because of any alleged ineffective assistance of habeas counsel. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987); Wainwright v. Torna, 455 U.S. 586, 587-88 (1982).

As the final variation on the theme, Jack seems to contend that habeas counsel was ineffective because he refused to raise the argument that trial counsel was ineffective. Jack states:

[T]he failure of trial counsel of investigate the scene of the crime . . . permitted the state to obtain [Jack's] conviction in violation of his due process; and the failure of habeas counsel to develop facts in support of this argument . . . deprived [Jack] of a 'full and fair hearing' on the issue of trial counsel's ineffectiveness
. . .

Again, Jack seems to be asserting the ineffective assistance of his first habeas counsel. As noted above, that claim cannot form the basis for subsequent habeas relief.

AFFIRMED.