

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3570
Conference Calendar

CHARLES E. CARTER,

Petitioner-Appellant,

versus

CLARENCE THIBODEAUX, Warden,
and RICHARD P. IEYOUB,
Attorney General, State of
Louisiana,

Respondents-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA 93-0952 E
- - - - -

(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Carter filed the instant 28 U.S.C. § 2254 petition alleging that his attorney was ineffective for not preparing an entrapment defense. The district court dismissed Carter's habeas petition as successive. Rule 9(b) provides, in part, that "[a] second or successive [habeas corpus] petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits[.]" Because the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

prior determination was not on the merits, the district court may have erred in concluding that Carter's present habeas petition was successive. Nevertheless, because affirmance is proper for other reasons, there is no need to vacate the judgment and remand for further proceedings. See Lavespere v. Niagara Mach. & Tool Works, Inc., 920 F.2d 259, 262 (5th Cir. 1990), cert. denied, 114 S.Ct. 171 (1993). Moreover, the district court conducted an analysis of the merits of Carter's ineffective-assistance claim under the "actual innocence" standard. See Sawyer v. Whitley, ___ U.S. ___, 112 S.Ct. 2514, 2519, 120 L.Ed.2d 269 (1992).

Although this Court liberally construes pro se briefs, arguments must be briefed to be preserved. See Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988); Fed. R. App. P. 28(a)(5). Carter discusses the issue of entrapment in his brief without mentioning how his counsel's performance was defective. Because Carter does not discuss the issue of his counsel's alleged ineffectiveness for failing to raise an entrapment defense, that issue is deemed abandoned. See Brinkmann v. Abner, 813 F.2d 744, 748 (5th Cir. 1987). Furthermore, by pleading guilty, Carter waived his right to assert, as he attempts to do in his brief, the non-jurisdictional defense of entrapment. See United States v. Yater, 756 F.2d 1058, 1063 (5th Cir.), cert. denied, 474 U.S. 901 (1985). Finally, nothing in Carter's brief indicates that he would have had a viable entrapment defense.

AFFIRMED.