IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3757
Summary Calendar

BRYANT THOMAS,

Petitioner-Apellant,

versus

RICHARD P. IEYOUB, Attorney General, State of Louisiana and JOHN P. WHITLEY, Warden Louisiana State Penitentiary,

Respondents-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana
(CA-93-2269-E)

(June 22, 1994)

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

PER CURIAM:*

Petitioner Bryant Thomas was convicted of armed robbery in violation of LA. REV. STAT. ANN. § 14:64 (West 1986) by a Louisiana jury. Witness testimony at the trial demonstrated that Thomas and another perpetrator carried out a planned robbery of a neighborhood insurance agent after the agent was leaving the yard

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of a door-to-door customer, Bobby Williams. Thomas forced the agent to the ground at gunpoint, stole $400 dollars, and then took the agent's wallet and credit cards. Thomas then ordered the victim to run towards William's house while Thomas fled. Williams witnessed the robbery from her front porch.

Thomas's petitions for post-conviction relief were denied. Thomas then filed a petition for habeas corpus relief in federal court alleging: 1) ineffective assistance of trial counsel, 2) denial of a fair trial due to the jury allegedly seeing him in prison garb, 3) denial of a fair trial because the trial court did not grant a mistrial after witness testimony concerning a prior bad act by Thomas, and 4) that there was insufficient evidence for a conviction. The district court dismissed the petition. We affirm.

DISCUSSION

Thomas first claims that he received ineffective assistance of counsel because his attorney failed to investigate and interview witnesses and did not visit him in jail. Under the two-prong test enunciated by the Supreme Court in Strickland v. Washington, 104 S. Ct. 2052, 2064 (1984), Thomas must show that his attorney's assistance was deficient and that it prejudiced his defense. An attorney must only provide "reasonably effective assistance." Id. Unless the deficient performance deprived the defendant of a fair trial, a Strickland claim cannot succeed. Id.

Thomas has not demonstrated that his attorney's performance was deficient. Thomas's primary complaint is that his attorney did not locate two witnesses who were allegedly going to provide an alibi defense. Complaints concerning uncalled witness testimony is not favored in federal habeas proceedings. Murray v. Maggio, 736 F.2d 279, 282 (5th Cir. 1984). Furthermore, Thomas's attorney attempted to locate one of the witnesses and was unable to do so because of Thomas's own reticence. The other witness was Thomas's alleged co-conspirator and was not called because of trial strategy. None of Thomas's remaining claims concerning ineffective assistance of counsel meet Strickland's requirements.

Second, Thomas complains that he was denied a fair trial because he appeared in court before witnesses and jurors in readily identifiable prison garb. While trying a defendant in prison clothing may infringe a fundamental right to the presumption of innocence, that right is only infringed if the state "compels" a defendant to stand trial before a jury in prison dress. United States v. Birdsell, 775 F.2d 645, 652 (5th Cir. 1985), cert. denied, 106 S. Ct. 1979 (1986). In the present case, Thomas was not dressed in prison garb for the entire trial; he only alleges that the jury might have seen him in prison garb briefly before the trial commenced. This occurred because Thomas's clothes that he was arrested in could not be located. Thomas was provided with other civilian clothing for his trial as soon as he requested them. Because Thomas was not *compelled* to

stand trial in prison garb, his right to a presumption of innocence was not infringed. See also Wright v. State of Texas, 533 F.2d 185, 187 (5th Cir. 1976) (reiterating that a brief encounter of the defendant in handuffs by jurors is not prejudicial without an affirmative showing otherwise).

Third, Thomas challenges the district court's refusal to grant a mistrial after a witness provided an answer on cross-examination that involved hearsay concerning Thomas stealing meat from a friend of the witness. The judge sufficiently admonished the jury to disregard the remark in accordance with Louisiana law; a mistrial was not necessary. See LA. CODE CRIM. PROC. ANN., art. 771 (West 1981). Furthermore, errors of state law, such as a denial of a mistrial, must rise to a constitutional dimension in order to merit habeas relief. Derden v. McNeel, 978 F.2d 1453, 1458 (5th Cir. 1992), cert. denied, 113 S. Ct. 2928 (1993). Thomas's complaint does not elicit constitutional concerns.

Finally, Thomas argues that there was insufficient evidence to convict him of armed robbery. As we stated in Scott v. State of La., 934 F.2d 631, 633 (5th Cir. 1991), "[o]n a sufficiency claim in a habeas corpus case, we view the evidence in the light most favorable to the prosecution, and we affirm the district court if we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." In the present case, a plethora of evidence existed to pin the crime on the perpetrator. Two eye-witnesses to the crime

specifically identified Thomas and the gun he brandished at the scene, while another witness testified that Thomas told her he planned to rob the insurance agent. A rational trier of fact certainly could have found the essential elements of armed robbery beyond a reasonable doubt.

AFFIRMED.