IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3811
Conference Calendar

ROBERT MYLES,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden,
LA State Penitentiary, 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 93-3244 "E" (4)
- - - - - - - - - -
(May 18, 1994)

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

PER CURIAM:*

Robert Myles filed the instant 28 U.S.C. § 2254 petition alleging that he had pleaded guilty to a non-existent crime because no bill of information existed. The district court dismissed Myles' habeas petition as an abuse of the writ.

"[A] serial habeas petition must be dismissed as an abuse of the writ unless the petitioner has demonstrated `cause' for not raising the point in a prior federal habeas petition and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

`prejudice' if the court fails to consider the new point." Saahir v. Collins, 956 F.2d 115, 118 (5th Cir. 1992). To establish cause, the petitioner must show that some external impediment, such as government interference or the reasonable unavailability of the factual or legal basis for the claim, prevented him from raising the claim initially. McCleskey v. Zant, 499 U.S. 467, 497, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991). A petitioner is required to have conducted "a reasonable and diligent investigation aimed at including all relevant claims and grounds for relief in the first federal petition. If what petitioner knows or could discover upon reasonable investigation supports a claim for relief in a federal habeas petition, what he does not know is irrelevant." Id. at 498.

Myles has failed to show cause for his neglect. He states in his brief that he did not learn of the non-existence of the bill of information until he received a August 9, 1993, letter from an assistant district attorney indicating that a copy of the bill of information could not be located in the office records.** However, Myles never explains how he was prevented from raising his current claim in an earlier federal habeas petition. Because Myles has not established cause for failing to assert his new claim in his earlier petitions, this Court need not decide whether he would be prejudiced by his inability to raise the alleged errors. McCleskey, 499 U.S. at 502.

** Myles neglects to point out that the letter also advised him that he might be able to obtain the record he requested from the Clerk of the Criminal District Court.

A petitioner may fail to satisfy the cause requirement of McCleskey and still obtain relief if he can show that "a fundamental miscarriage of justice would result from a failure to entertain the claim." Id. at 494-95. This is a very narrow exception that implies that the alleged constitutional violation probably has caused an innocent person to be convicted. Woods v. Whitley, 933 F.2d 321, 323 (5th Cir. 1991). "Actual innocence" in this context is factual, as opposed to legal, innocence resulting from a constitutional violation. Johnson v. Hargett, 978 F.2d 855, 859 (5th Cir. 1992), cert. denied, 113 S.Ct. 1652 (1993). Myles pleaded guilty to the possession of dilaudid charge and he has not asserted his innocence. Therefore, he has not shown that the refusal to entertain his serial petition will result in a miscarriage of justice. Thus, the district court did not abuse its discretion in dismissing the petition for abuse of the writ. Saahir, 956 F.2d at 120.

AFFIRMED.