UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5125
Summary Calendar

DENNIS McCABE,

Petitioner-Appellant,

versus

WARDEN, ELY STATE PRISON,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(91-CV-1200)

(July 5, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

The district court denied federal habeas relief on all of the grounds urged by appellant McCabe. We find no error in its rulings and affirm based on that opinion and the following additional observations.

First, the federal district court in Louisiana had jurisdiction over McCabe's petition. Under the Supreme Court's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

expansive definition of the "custody" requirement, a habeas petitioner held in one state can challenge the validity of a detainer lodged against him in another state. Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 498, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973). In such a case, the federal district court in the state of confinement has concurrent jurisdiction over the habeas petition with the federal district court in the demanding state, and the district court in the state of confinement can transfer the petition to the more convenient forum. 410 U.S. at 499 n.15. That is what happened here.

Second, McCabe now asserts that his counsel was ineffective for failing to suppress McCabe's confession and ineffective on appeal before the Louisiana Supreme Court. As these asserted grounds of ineffectiveness were not before the district court, this court will not consider this claim for the first time on appeal. Johnson v. Puckett, 930 F.2d 445, 448 (5th Cir.), cert. denied, 112 S.Ct. 252 (1991).

Third, although McCabe seeks relief on the basis of "prosecutorial misconduct," he fails to point to any impropriety at trial which could have deprived him of a fair trial. Rather, he complains of the prosecutor's "involvement during the initial police interrogation in which appellant was coerced into rendering a confession." Thus, McCabe is again attempting to raise the coerced-confession issue, this time by casting his claim as one of "prosecutorial misconduct." As the district court demonstrated, McCabe's challenge to the coerced confession is without merit.

McCabe also argues that the district court should not have allowed the prosecutor to represent the respondent. He had moved the court to disqualify the prosecutor from appearing in the case. Notwithstanding McCabe's assertion that the prosecutor knowingly committed perjury and violated "[a] multitude of Professional Standards and Rules," the record does not disclose that the prosecutor violated any "duty of candor" imposed upon him in dealing with McCabe. Cf. Jackson v. Wainwright, 390 F.2d 288, 289 (5th Cir. 1968) (prosecutor's failure to disclose exculpatory evidence relating to the identification of the accused violated the duty of candor imposed on him in dealing with a criminal accused). Thus, the district court did not err in not recusing the prosecutor.

The state court record was fully adequate to review McCabe's claims without an evidentiary hearing. The district court's judgment is AFFIRMED.