

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-7027  
Summary Calendar

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EDWARD W. DAVIDSON,

Petitioner-Appellant,

VERSUS

STATE OF MISSISSIPPI,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
(E90-99(L))

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(November 19, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

In 1981 Appellant pled guilty to murder in Mississippi state court and was sentenced to life imprisonment. He was precluded from direct appeal to the Mississippi Supreme Court by his plea, and is now precluded from seeking collateral relief in Mississippi by the passage of time. Patterson v. State, 594 So.2d 606, 607-08 (Miss. 1992). Nine years after conviction Appellant sought habeas relief in the district court which was denied for his failure to show cause and prejudice. He appeals. We affirm.

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Appellant raises four issues which he has never presented to the state court. A federal habeas petitioner is procedurally barred from raising an issue in federal court that he has never presented to a state court unless he can show cause for his default and prejudice resulting therefrom. Teague v. Lane, 489 U.S. 288 (1989). The cause standard requires petitioner to show "some objective factor external to the defense impeded counsel's efforts" to raise the claim in state court. Murray v. Carrier, 477 U.S. 478, 488 (1986). Once the petitioner has established cause, he must show "'actual prejudice' resulting from the errors for which he complains." McCleskey v. Zant, \_\_\_ U.S. \_\_\_, 111 S.Ct. 1454, 1470 (1991).

Appellant bases his failure to seek post conviction relief in state court on his ignorance of the law. Ignorance of the law, however, does not constitute cause for procedural default. See Woods v. Whitley, 933 F.2d 321, 323 (5th Cir. 1991). Additionally, there is no evidence of objective factors that made compliance with the state procedural rule impractical.

Even if a habeas petitioner is unable to show cause and prejudice, we may entertain his petition to prevent a "fundamental miscarriage of justice." Saahir v. Collins, 956 F.2d 115, 119 (5th Cir. 1992). Such a miscarriage "implies that a constitutional violation probably caused the conviction of an innocent person." Saahir, 956 F.2d at 119. "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).

In his explanation of why he did not seek state court relief, Appellant does not assert his innocence. Nevertheless, in his petition to enter his guilty plea, Appellant stated that once he realized what he was doing, he stopped choking the victim and that someone else killed the victim. This conclusory allegation alone, however, does not raise the issue of innocence. See Koch v. Puckett, 907 F.2d 524, 530 (5th Cir. 1990). In addition, even if those facts were correct, Appellant could have been convicted of murder as an accessory. See Miss. Code Ann. § 97-1-3 (1973). Appellant has not shown that our application of the procedural bar would result in a fundamental miscarriage of justice.

AFFIRMED.