

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7208
Conference Calendar

JEROME BENBOW,

Petitioner-Appellant,

versus

EDWARD HARGETT, Superintendent,
Mississippi State Penitentiary,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. CA 91-120-D
- - - - -
(October 28, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Jerome Benbow has appealed from the district court's denial of his petition for habeas corpus relief relative to his conviction in a Mississippi state court of sexual battery on his adopted daughter Robyn. We affirm.

Benbow contends that he is entitled to relief on grounds that the jury verdict was against the overwhelming weight of the evidence and contrary to law. He argues that Robyn's testimony

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

was so impeached that it was not credible.

"Insufficiency of the evidence can support habeas corpus relief only where the evidence, viewed in the light most favorable to the prosecution, is such that no rational fact finder could have found the essential elements of the crime beyond a reasonable doubt." Marler v. Blackburn, 777 F.2d 1007, 1011 (5th Cir. 1985). "The Court must refer to the substantive elements of the criminal offense as defined by state law." Turner v. McKaskle, 721 F.2d 999, 1001 (5th Cir. 1983). "The evidence need not exclude every reasonable hypothesis of innocence, however, and a jury may choose any reasonable construction of the evidence." Story v. Collins, 920 F.2d 1247, 1255 (5th Cir. 1991). Furthermore, "[a] federal court may not substitute its own judgment regarding the credibility of witnesses for that of the state courts." Marler, 777 F.2d at 1012.

Benbow was convicted of violating Miss. Code Ann. § 97-3-95(1)(a)(Supp. 1993), which provides: "A person is guilty of sexual battery if he or she engages in sexual penetration with: (a) Another person without his or her consent." Section 97-3-97(a) provides in part that "`Sexual penetration' includes . . . any penetration of the genital or anal openings of another person's body by any part of a person's body."

Robyn Benbow testified without contradiction that after Benbow unsuccessfully attempted to force her to have sexual intercourse with her, he inserted his fingers into her vagina against her will. Robyn testified further that she escaped

momentarily only to have Benbow return and again insert his fingers into her vagina against her will.

In Peters v. Whitley, 942 F.2d 937, 938-39, 941-42 (5th Cir. 1991), cert. denied, 112 S.Ct. 1220 (1992), this Court found that the evidence was sufficient to support a conviction of simple rape even though the substantial evidence of guilt consisted only of the severely retarded victim's testimony. In the case sub judice, Robyn Benbow's testimony was substantially corroborated by that of the physician who examined her and another witness.

The credibility of the witnesses was for the jury to determine. Marler, 777 F.2d at 1012. Construing the trial evidence in the light most favorable to the prosecution, a rational trier of fact could reasonably have found Benbow guilty beyond a reasonable doubt, as his jury did. Accordingly, the district court did not err by denying habeas relief to him.

AFFIRMED.