

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8114
Conference Calendar

ISMAEL L. RIVAS, JR.,

Petitioner-Appellant,

versus

JAMES A. COLLINS, Director TDC,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-92-CV-120
- - - - -
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Ismael Rivas has appealed the denial of his petition for federal habeas corpus relief. Rivas alleges that his trial attorney provided ineffective assistance of counsel because he failed to investigate a defense witness and a potential rebuttal witness for the prosecution. He also suggests that his attorney was ineffective for failing to object to the testimony of Detective Bostick, the prosecution's rebuttal witness.

To obtain habeas corpus relief based on ineffective

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

assistance of counsel, a defendant must show not only that his attorney's performance was deficient, but that the deficiencies prejudiced the defense. United States v. Smith, 915 F.2d 959, 963 (5th Cir. 1990). To demonstrate prejudice, he must show that counsel's deficient performance caused the result of the trial to be unreliable or rendered the proceeding fundamentally unfair. Lockhart v. Fretwell, ___ U.S. ___, 113 S.Ct. 838, 844, 122 L.Ed.2d 180 (1993). A claim may be rejected because of an insufficient showing of prejudice, without assessing the adequacy of counsel's performance. United States v. Fuller, 769 F.2d 1095, 1097 (5th Cir. 1985).

As the victim's identification of Rivas as the robber was clear and unequivocal, Rivas has failed to demonstrate that any of the alleged errors affected the result of the trial or caused it to be fundamentally unfair.

AFFIRMED.