

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 93-8555

Summary Calendar

LAWRENCE E. JOHNSON,

Petitioner-Appellant,

VERSUS

WAYNE SCOTT,

Respondent-Appellee.

Appeal from the United States District Court
For the Western District of Texas

(No. W-93-CA-41)

(May 29, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This is an appeal from the district court, which in part dismissed appellant's § 2254 successive petition for a writ of habeas corpus for abuse of the writ and which granted summary

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

judgment in favor of the respondent on appellant's remaining claim. We AFFIRM for the following reasons:

1. Appellant has not shown cause for failing to raise the particular claims in his successive petition in a prior petition before the district court. Additionally, the failure to hear the claims would not result in a fundamental miscarriage of justice (appellant does not claim actual innocence). Under such circumstances, the district court may not consider the merits of repetitive or new claims which constitute an abuse of the writ. Sawyer v. Wright, 112 S. Ct. 2514, 2518-19 (1992).

2. With respect to appellant's claim that a prior felony used for enhancement had improperly been corrected by a nunc pro tunc order, the district court properly granted summary judgment. Clerical errors in state court judgments are allowed if the corrections are made in accordance with state law. Crockett v. McCotter, 796 F.2d 787, 792 (5th Cir.), cert. denied, 479 U.S. 1021 (1986). In Texas, trial courts have the inherent power to make corrections by nunc pro tunc orders to reflect what actually occurred. Wilson v. State, 677 S.W.2d 518, 522 (Tex. Crim. App. 1984). The corrections to reflect the offense for which the appellant was in fact convicted were proper and did not render the conviction void. Accordingly, the prior conviction was available to enhance the conviction assailed by appellant in his § 2254 petition. Johnson has not shown a violation of his constitutional rights, therefore judgment is AFFIRMED.