

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9041
Summary Calendar

KENNETH LEE COLEMAN,

Petitioner-Appellant,

versus

WAYNE SCOTT, Director, Texas
Dept. of Criminal Justice,
Institutional Division,

Respondent-Appellee.

Appeal from the United States District Court
For the Northern District of Texas
(4:93-CV-53-Y)

(September 29, 1994)

Before POLITZ, Chief Judge, DUHÉ and PARKER, Circuit Judges.

PER CURIAM:*

Kenneth Lee Coleman, a Texas state prisoner, appeals denial of his petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. Finding no error, we affirm.

Coleman was convicted by a jury of aggravated robbery with a

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

deadly weapon and was sentenced, as a repeat offender, to 80 years imprisonment. The conviction was affirmed on appeal. After exhausting collateral state remedies, Coleman filed the instant petition. On the recommendation of the magistrate judge the district court denied relief. The district court granted a certificate of probable cause and Coleman timely appealed.

Coleman raises multiple points of error. None has even arguable merit. His fourth amendment claim is not cognizable on federal collateral review; he had an opportunity to litigate the claim in state court.¹ His speedy trial complaint is frivolous; the lion's share of responsibility for the 18-month period between arrest and trial falls on Coleman, who repeatedly switched attorneys.² The issuance of two indictments, the second adding an enhancement paragraph, did not implicate the double jeopardy clause because Coleman was not tried under the first indictment and therefore jeopardy did not attach.³ Coleman's assertions that he was denied the right to testify and to present witnesses are purely conclusory.⁴ So too is his claim of ineffective assistance of counsel. We decline to disturb the trial court's determination that the state offered nondiscriminatory reasons for striking three

¹**Caver v. State of Alabama**, 577 F.2d 1188 (5th Cir. 1978).

²See **Nelson v. Hargett**, 989 F.2d 847 (5th Cir. 1993).

³**United States v. Garcia**, 589 F.2d 249 (5th Cir.), cert. denied, 442 U.S. 909 (1979).

⁴See **Ward v. Whitley**, 21 F.3d 1355 (5th Cir. 1994).

African-American jurors and accordingly reject Coleman's **Batson**⁵ claim.⁶ Coleman's challenge to the refusal to dismiss certain members of the venire fails because he showed no prejudice; those challenged said they would more likely believe a police officer than a lay witness but the only police officer testimony offered was identification of Coleman's fingerprints for purposes of establishing a prior conviction.⁷ Finally, Coleman's complaint about the temporary misfiling of certain habeas papers by a state court clerk does not implicate the violation of a federal right. The issues raised on appeal border onto being frivolous.

AFFIRMED.

⁵**Batson v. Kentucky**, 476 U.S. 79 (1986).

⁶**United States v. Seals**, 987 F.2d 1102 (5th Cir.), cert. denied, 114 S.Ct. 155 (1993).

⁷**Bridge v. Lynaugh**, 838 F.2d 770 (5th Cir. 1988).