

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-30392
Summary Calendar

FRANK WINDING, JR.,

Petitioner-Appellant,

VERSUS

JOHN P. WHITLEY, Warden, Louisiana State Penitentiary
and RICHARD P. IEYOUB, Attorney General, State of Louisiana,

Respondents,

JOHN P. WHITLEY, Warden, Louisiana State Penitentiary,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-94-0050-B)

(January 3, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:¹

Appellant Frank Winding, Jr., who is serving a life sentence in the Louisiana State Penitentiary for aggravated rape of a 14 year old girl, filed this federal habeas proceeding alleging that he was denied effective assistance of counsel because counsel allowed him to stand trial in identifiable prison clothing without

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

objection. The district court concluded that, in view of the overwhelming evidence against Appellant, he had failed to demonstrate that he had suffered prejudice as a result of counsel's failure to object. We affirm.

To succeed, Appellant must prove that his counsel made an error that was so serious that it deprived him of his Sixth Amendment guaranty and that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668 (1984). Our examination of counsel's performance is highly deferential. Id. at 689. To show prejudice, Appellant must demonstrate that counsel's error was so serious as to deprive him of a trial whose result is fair or reliable. Lockhart v. Fretwell, 113 S.Ct. 838, 844 (1993).

Appellant emphasizes the point of entry, the failure to find the articles of clothing described by the victim and the inconclusive serology tests. But he ignores the other factors considered by the jury. An examination of this record shows that the jury was presented with overwhelming evidence of Appellant's guilt. It was obvious that the jury credited the testimony of the victim and her roommate over the testimony of Defendant's witnesses. Given the overwhelming evidence in this case, Appellant has demonstrated no prejudice.

AFFIRMED.