

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30599

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KEITH DEES,

Petitioner-Appellant,

versus

ALTON BRADDOCK, Warden at Wade Correctional Center,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
(CA-92-1088-A)

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January 9, 1996

Before JONES, EMILIO M. GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Appellant Dees, who is serving a life sentence in Louisiana for committing an aggravated crime against nature against a nine year old child, has sought federal habeas relief on several allegations of ineffective assistance of counsel. Although the federal magistrate judge recommended granting relief in her memoranda, the district court wrote a contrary opinion and denied relief. We affirm for the following reasons:

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

(1) Trial counsel was not constitutionally ineffective for failing to object to Dr. Bombet's testimony that he "believed" the victim's story. As a pediatrician responsible for diagnosing the victim's physical condition and recommending medical or psychiatric assistance, Dr. Bombet was required to act on his view of the victim's credibility. He was competent to testify on this question, and at the time of trial, Louisiana law permitted such testimony. Counsel made no mistake in failing to object.

(2) Trial counsel's failure to object to statements by the prosecutor in closing argument were also not deficient. The prosecutor's overreaching arguments are alleged to include those vouching personally for the victim's credibility; claiming that other witnesses believed the victim; commenting on his experience and knowledge as a prosecutor; and referring to the victim's description of his attack as the most common form of such conduct. The prosecutor made no error in reminding the jurors of the witnesses' testimony, and his comments on his experience reflect common knowledge about child sexual molestation. To the extent the prosecutor's other comments might have been subject to valid objection, Dees's trial counsel may have made reasonable tactical decisions not to intrude on the state's closing argument. Under Strickland, we are obliged to give the benefit of the doubt to reasonable tactical decisions and not to re-litigate the case in hindsight. Strickland v. Washington, 104 S. Ct. 2052, 2064 (1984).

(3) Trial counsel's failure to seek a mistrial when the prosecutor began to inquire whether Dees might be homosexual was

not constitutionally deficient. The questions themselves were objected to, and the answers stricken. Defense counsel later raised the same issue with Dees's girlfriend to defuse the natural jury suspicions provoked by the attack on a young male. Neither the deficiency nor the prejudice criterion of Strickland error exists here.

The judgment of the district court is **AFFIRMED**.