

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30745
Conference Calendar

HENRY K. CARTER,

Petitioner-Appellant,

versus

BURL CAIN, Acting Warden,
Louisiana State Penitentiary
RICHARD P. IEYOUB,
Attorney General, State of
Louisiana,

Respondents-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-94-2652-E
- - - - -

June 30, 1995

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

PER CURIAM:*

Henry K. Carter was convicted by a jury of aggravated rape, aggravated kidnapping, armed robbery, and aggravated crime against nature, and was sentenced to two life sentences, 99 years, and 15 years to run concurrently. Carter filed this petition for a writ of habeas corpus, alleging that the state knowingly used perjured testimony by the victim. The district court denied the petition.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

The victim's trial testimony is inconsistent with her pretrial statement on the facts leading up to her encounter with Carter, but Carter has not shown any inconsistencies in her testimony regarding the actual kidnapping, rape, or robbery. Carter has not shown that her testimony was false or that the state knowingly used false testimony. See Braxton v. Estelle, 641 F.2d 392, 395 (5th Cir. 1981). Carter had the police report, was aware of her prior statement, and cross-examined her about the inconsistency. See United States v. Sutherland, 656 F.2d 1181, 1203 (5th Cir. 1981), cert. denied, 455 U.S. 949 (1982). Any contradiction in her testimony was a credibility determination to be made by the jury. See United States v. Miranne, 688 F.2d 980, 989 (5th Cir. 1982), cert. denied, 459 U.S. 1109 (1983); United States v. Holladay, 566 F.2d 1018, 1019 (5th Cir.), cert. denied, 439 U.S. 831 (1978).

AFFIRMED.