

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40623  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BILLY RAY TATUM,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 94-CV-0806; CR 91-50073-01  
- - - - -

(January 27, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,  
Circuit Judges.

PER CURIAM:\*

The district court dismissed Billy Ray Tatum's Section 2255 motion as successive under Rule 9(b) of the Rules Governing Section 2255 Proceedings.

A court may not reach the merits of successive claims absent a showing of cause for not raising the point in a prior petition and prejudice if the court fails to consider the new point.

McCleskey v. Zant, 499 U.S. 467, 497-98, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991); United States v. Flores, 981 F.2d 231, 235

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(5th Cir. 1993). To demonstrate cause, the petitioner must show that "some objective factor external to the defense impeded counsel's efforts" to raise the claim in the initial petition. McCleskey, 499 U.S. at 497-98. A movant's pro se status does not necessarily constitute "cause," and if the factual and legal basis for the subsequently alleged argument was reasonably available to the movant at the time of the initial filing, the movant's delay in raising it will not be excused. Saahir v. Collins, 956 F.2d 115, 118 (5th Cir. 1992).

Tatum has not established cause for his failure to raise the claims in his previous motions. Tatum has also failed to show that the district court's failure to consider his claims will result in a fundamental miscarriage of justice, as he has not alleged that he is innocent of the underlying crimes for which he was convicted. See Sawyer v. Whitley, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2514, 2519, 120 L. Ed. 2d 269 (1992). The district court did not abuse its discretion in denying his motion. See Hudson v. Whitley, 979 F.2d 1058, 1062 (5th Cir. 1992). Therefore, the district court's judgment is AFFIRMED.