

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40936  
Conference Calendar

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FRANK DAVIS,

Petitioner-Appellant,

versus

BURL CAIN, Acting Warden,  
LA State Pen.,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 92-CV-2240  
- - - - -

(January 25, 1995)

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

PER CURIAM:\*

Frank Davis was convicted of second-degree murder and sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence. The district court dismissed his federal petition for writ of habeas corpus.

Davis argues that after his arrest he was interrogated and gave an inculpatory statement without being warned of his Miranda rights. Deputy Sheriff Willie Robinson testified, without objection, that he informed Davis of his Miranda rights and that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Davis knowingly and freely waived those rights. In post-conviction proceedings, the state court found that the Miranda warnings had been given. This determination is entitled to a presumption of correctness as there is nothing in the record to support Davis's contention that he was not informed of his rights. See Self v. Collins, 973 F.2d 1198, 1204-05 (5th Cir. 1992), cert. denied, 113 S. Ct. 1613 (1993); 28 U.S.C. § 2254(d). The district court properly dismissed this claim.

Davis also argues that he was denied effective assistance of counsel. To establish an ineffective assistance of counsel claim Davis must demonstrate that his attorney's performance was deficient and that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Davis argues that his attorney was ineffective for failing to challenge the Miranda violation. The record does not support Davis's contention that he was not given Miranda warnings, and therefore he cannot demonstrate Strickland prejudice. Lockhart v. Fretwell, \_\_\_ U.S. \_\_\_, 113 S. Ct. 838, 844, 122 L. Ed. 2d 180 (1993) (to establish prejudice a defendant must show that counsel's errors were so serious as to render the proceedings unreliable and fundamentally unfair).

For the first time on appeal Davis argues that his attorney was ineffective because he was concerned for his own safety and therefore did not provide an adequate defense. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to

consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). A claim of ineffective assistance of counsel involves a mixed determination of law and fact, see Loyd v. Smith, 899 F.2d 1416, 1425 (5th Cir. 1990), and therefore we will not address it initially on appeal.

Judgment AFFIRMED; motion DENIED. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).