

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60117

ROGER FAIRCHILD,

Petitioner-Appellant,

versus

EDWARD M. HARGETT, ET AL.,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-4:92-0086(L)(N))

(April 27, 1995)

Before HIGGINBOTHAM, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

Fairchild's habeas petition alleged that his trial counsel had been ineffective, and the district court correctly dismissed this claim for failure to exhaust state remedies. Fairchild has not shown cause for what he concedes was a procedural default, because there was no external impediment to his timely raising the claim. State court officials merely failed to notify him that he should have filed his state habeas petition with the Mississippi Supreme

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Court. And Fairchild has not shown that we should excuse his procedural default to avoid a fundamental miscarriage of justice.

In his petition, "Fairchild also claims that he is actually innocent of the crime for which he was convicted." Even construed liberally, his conclusory allegations are not a sufficiency-of-the-evidence argument. Read in context, they are meant to overcome the cause-and-prejudice obstacle to Fairchild's ineffective-assistance-of-counsel claim. In other words, Fairchild was trying to show a fundamental miscarriage of justice.

Because the only issue in Fairchild's federal habeas petition was barred by his procedural default, and because Fairchild has shown neither cause for the default nor a fundamental miscarriage of justice, we AFFIRM.