

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60159
Conference Calendar

DONNIE R. SINGLETON,

Petitioner-Appellant,

versus

EDWARD M. HARGETT, Superintendent,
Mississippi State Penitentiary,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CA-3:92-361
- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Donnie Ray Singleton filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the district court alleging that his trial counsel had been ineffective. The district court dismissed Singleton's habeas petition as successive under Rule 9 of the Rules Governing § 2254 Cases.

Rule 9(b) provides that "[a] second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ." The district court may not consider the merits of new claims which constitute an abuse of the writ unless the petitioner shows cause and prejudice for failing to raise those claims in a prior petition or shows that the failure to hear the claims will result in a fundamental miscarriage of justice. Sawyer v. Whitley, ___ U.S. ___, 112 S. Ct. 2514, 2518-19, 120 L. Ed. 2d 269 (1992). This cause-and-prejudice standard is the same as the standard applied in state procedural default cases. McCleskey v. Zant, 499 U.S. 467, 494-96, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991); Woods v. Whitley, 933 F.2d 321, 323 (5th Cir. 1991). A dismissal under Rule 9(b) will be reversed only for an abuse of discretion. Hudson v. Whitley, 979 F.2d 1058, 1062 (5th Cir. 1992).

With respect to the claims that counsel was ineffective, Singleton either knew or should have known of the facts forming the basis of these claims at the time of his first petition. See Saahir v. Collins, 956 F.2d 115, 119 (5th Cir. 1992). Singleton raised the speedy trial issue in his first federal petition and this Court found that the delay was not presumptively prejudicial. He also raised, in his first petition, the issue that his counsel was ineffective for not objecting to testimony given by the victim.

To the extent that these claims present any new issues, Singleton has not shown any cause for not raising them in his first petition. Singleton argues that he was unable to present

his claims properly in his first petition because he did not have a trial transcript, but he has not stated what information was contained in the transcript that he did not have at the time of the first petition. Also, Singleton has not shown that a failure to consider these claims will result in a miscarriage of justice. Sawyer, 112 S. Ct. at 2518-19. The dismissal under Rule 9(b) was not an abuse of discretion.

AFFIRMED.