

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-40905
Conference Calendar

DERRELL R. KING,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-95-CV-274
- - - - -

May 21, 1996

Before DAVIS, BARKSDALE and DeMOSS, Circuit Judges.

PER CURIAM:*

Derrell King appeals from the district court's dismissal pursuant to Rule 9(b) of the Rules Governing 28 U.S.C. § 2254 Proceedings of his petition for writ of habeas corpus. He asserts that his attorney's ineffectiveness was the cause for his failure to raise in his first habeas petition the claims he raised in his second petition. Because there is no

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

constitutional right to counsel in federal habeas, no error by counsel in a habeas proceeding can constitute cause. Johnson v. Hargett, 978 F.2d 855, 859 (5th Cir. 1992). King has failed to show cause or make a colorable showing that a constitutional violation probably caused the conviction of an innocent person. See McCleskey v. Zant, 499 U.S. 467, 502 (1991). The district court did not abuse its discretion in dismissing the claims under Rule 9(b).

AFFIRMED.