

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40131
Summary Calendar

EDDIE LEWIS FITCH,

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 Eastern District of Texas
(6:94-CV-141)

October 2, 1996

Before POLITZ, Chief Judge, KING and PARKER, Circuit Judges.

PER CURIAM:*

Eddie Lewis Fitch, a Texas state prisoner, appeals the denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. Fitch maintains that his guilty

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

plea was not knowingly and voluntarily entered. Our review of the record reflects neither error of fact nor law and the ruling appealed is affirmed on the facts as found, analysis made, and authorities cited by the United States Magistrate Judge in her Report and Recommendations filed October 17, 1995, which were adopted by the district court in its Order of Dismissal filed January 18, 1996.

Fitch contends for the first time on appeal that the indictment charging aggravated robbery was fundamentally defective because it neither alleged nor described the property that was taken in the robbery, and because it was amended without approval of the grand jury. He also raises for the first time allegations of error by his counsel. These assignments of error were not raised in the district court and we may review only for plain error.¹ Fitch has failed to show that the alleged defect in the indictment or his counsel's alleged errors qualify as plain error.

The sufficiency of the evidence is not challenged in the brief and that issue is deemed abandoned.²

AFFIRMED.

¹**Douglass v. United Serv. Auto. Ass'n**, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

²See **Yohey v. Collins**, 985 F.2d 222 (5th Cir. 1993).