

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60043

HERWIN NOE,

Petitioner-Appellant,

versus

RAYMOND ROBERTS,
SUPERINTENDENT,
MISSISSIPPI STATE PENITENTIARY,

Respondent-Appellee.

Appeal From the United States District Court
for the Southern District of Mississippi
3:95-cv-435-BN

January 6, 1997

Before POLITZ, Chief Judge, and WIENER and STEWART, Circuit Judges.

PER CURIAM:*

Petitioner-Appellant Herwin Noe appeals from the district court's order adopting the Report and Recommendation of the magistrate judge and dismissing Noe's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254. Noe contends primarily

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

that the district court erred in determining that (1) he was not subject to constitutionally ineffective assistance of counsel, (2) the evidence adduced at trial was constitutionally sufficient to support a guilty verdict on the charge of murder, (3) the introduction of autopsy photographs did not render his trial unfair, (4) his constitutional right to a speedy trial was not violated, and (5) his other claims not objected to at trial or on direct appeal were procedurally barred by an adequate and independent state procedural rule.

In conducting our review of all these issues pursuant to the standards provided in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA),¹ and in light of Noe's failure to object to the factual findings contained in the magistrate judge's Report and Recommendation,² we carefully evaluated the record on appeal, the arguments of both pro se Petitioner Noe and the Respondent as set forth in their respective briefs, and the applicable law, and we have come to the same legal conclusions as did the district court. We found particularly persuasive the articulate and well-reasoned

¹ AEDPA §§ 101-106, Pub. L. No. 104-132, Sec. 101-106, 110 Stat. 1214, 12-14-21 (1996), codified at, 28 U.S.C. §§ 2241-2255.

² Because the notice Noe received in connection with the Report and Recommendation did not comply with Douglass v. United Services Auto Ass'n, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), we apply our former standard which bars a party from attacking on appeal any factual findings accepted or adopted by the district court except upon grounds of plain error or manifest injustice. Nettles v. Wainright, 677 F.2d 404, 410 (5th Cir. 1982) (en banc).

findings contained in the Report and Recommendation submitted to the district court by United States Magistrate Judge Alfred G. Nichols. We therefore affirm in all respects the district court's dismissal of Noe's petition for the reasons set forth in the magistrate judge's Report and Recommendation, a copy of which is attached.

AFFIRMED.