

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50617
(Summary Calendar)

LAVESTER ROBERSON,

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 Western District of Texas
USDC No. MO-96-CV-172

April 9, 1998

Before JONES, SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Texas prisoner Lavester Roberson, #483555, appeals from the grant of summary judgment by the district court in favor of Respondent. The district court granted Roberson a certificate of appealability to appeal two issues: (1) whether the State elicited testimony from a State witness about Roberson's voluntary post-arrest, post-Miranda statements in violation of Doyle v. Ohio, 426 U.S. 610 (1976), and (2) whether Roberson's state trial counsel was ineffective.

We have reviewed the record and the briefs of the parties and hold that any Doyle error was harmless. Pitts v. Anderson, 122 F.3d 275, 279-81 (5th Cir. 1997). In the event of a Doyle error, a petitioner is not entitled to federal habeas relief unless the error had a "substantial and injurious

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

effect or influence in determining the jury's verdict.' ” Brecht v. Abrahamson, 507 U.S. 619, 637-38 (1993) (quoting Kotteakos v. United States, 328 U.S. 750, 776 (1946)). Roberson has not met the burden of demonstrating such effect. We further hold that Roberson's counsel was not ineffective. Strickland v. Washington, 466 U.S. 668, 687-94 (1984). Roberson has not introduced the requisite clear and convincing evidence to prove that the state habeas court's findings regarding his ineffective assistance of counsel claim are erroneous. Williams v. Cain, 125 F.3d 269, 277 (5th Cir. 1997); 28 U.S.C. §2254(e)(1).

AFFIRMED.