

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40934
Summary Calendar

ARNULFO RODRIGUEZ,

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-97-CV-238
- - - - -

March 11, 1999

Before JOHNSON, DUHE', and STEWART, Circuit Judges.

PER CURIAM:*

Arnulfo Rodriguez, Texas prisoner # 665576, appeals the district court's denial of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Rodriguez contends that he received ineffective assistance of trial counsel because his attorney failed to investigate the murder indictment to see if it was returned by the grand jury before the victim had died and because his attorney failed to challenge the state court's entry of a deadly-weapon finding.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

To prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness; and (2) that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 689-694 (1984). "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Id. at 689. To show Strickland prejudice, a defendant must demonstrate that counsel's errors were so serious as to "render[] the result of the trial unreliable or the proceeding fundamentally unfair." Lockhart v. Fretwell, 506 U.S. 364, 372 (1993). A failure to establish either deficient performance or prejudice defeats the claim. Strickland, 466 U.S. at 697.

Upon *de novo* review, Rodriguez has not demonstrated either deficient performance or prejudice arising from counsel's failure to challenge the second indictment or from his failure to object to the deadly-weapon finding. Because Rodriguez has failed to demonstrate that he has met the Strickland test for ineffective assistance of counsel, the district court's judgment is AFFIRMED.