

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-51042
Summary Calendar

SAMUEL LEE CURRY, JR.,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. A-97-CV-106
- - - - -

August 13, 1999

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Samuel Curry ("Curry"), Texas state prisoner # 706332, has appealed the denial of his petition for federal habeas relief. He argues that the district court erred in denying review of his claim, that his plea was involuntary and the result of ineffective assistance of counsel because his state and federal sentences did not run concurrently as promised in his state plea agreement, since he procedurally defaulted it in state court.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Curry also argues that the district court erred in denying his claim that he received ineffective assistance of counsel because his attorney failed to file timely pre-trial motions and to prepare adequately for trial by properly investigating his case and interviewing witnesses. Curry has recently filed motions for a transcript and to file supplemental brief.

Curry's motions are denied. He has not demonstrated why the transcript of the hearing is necessary given that he had access to the audiotapes of the hearing.

The district court correctly denied federal habeas review to Curry's concurrent sentences claim because he defaulted the claim in state court pursuant to an independent and adequate state procedural rule and was not able to demonstrate actual prejudice as a result of the alleged violation of federal law. See Coleman v. Thompson, 501 U.S. 722, 750 (1991). The district court also correctly denied his other ineffective assistance of counsel claims because he failed to show prejudice. See Hill v. Lockhart, 474 U.S. 52, 59 (1985). The judgment of the district court is AFFIRMED.

AFFIRMED; MOTIONS DENIED.