

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-60594
Summary Calendar

KEVIN COLLINS,

Petitioner-Appellant,

versus

JAMES V. ANDERSON, SUPERINTENDENT,
MISSISSIPPI STATE PENITENTIARY,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:97-CV-177-WS

February 5, 2001

Before DAVIS, JONES, and DeMOSS, Circuit Judges.

PER CURIAM:*

Kevin Collins, Mississippi prisoner # 43913, appeals the district court's dismissal of his 28 U.S.C. § 2254 petition. A certificate of appealability was granted on the issue whether Collins received ineffective assistance of counsel when his attorney purportedly refused to allow him to testify at trial.

To prevail on an ineffective-assistance-of-counsel claim, a petitioner must show that counsel's performance was deficient and that the deficiency prejudiced the defense. Strickland v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Washington, 466 U.S. 668, 687 (1984). A petitioner must prove both deficient performance and prejudice, and a failure to establish either deficient performance or prejudice defeats the claim. Id. at 697.

To prove deficient performance, the petitioner must show that counsel's actions fell below an objective standard of reasonableness. Strickland. 466 U.S. at 687. To prove prejudice, the petitioner must show that counsel's deficient performance rendered the proceeding unreliable or fundamentally unfair. Lockhart v. Fretwell, 506 U.S. 364, 372 (1993).

Collins' bare assertion that he wanted to testify, but was prevented from doing so by counsel, is not enough to demonstrate either deficient performance or prejudice. See Lincecum v. Collins, 958 F.2d 1271, 1279-80 (5th Cir. 1992). Accordingly, since he has failed to demonstrate either deficient performance or prejudice under Strickland, the district court's decision is AFFIRMED.