

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-30275  
Summary Calendar

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JOHN HENRY MCCLINTOCK,

Petitioner-Appellant,

versus

BURL CAIN, Warden, Louisiana  
State Penitentiary,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 96-CV-1678-A  
- - - - -

September 23, 1997

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:<sup>1</sup>

John Henry McClintock, Louisiana inmate #97631, appeals the dismissal of his habeas petition based on procedural default. He raised one claim in his federal petition, prosecutorial misconduct by failing to disclose victim and witness statements which could have been used as impeachment evidence. See Brady v. Maryland, 373 U.S. 83, 86 (1963).

He argues that he demonstrated cause and prejudice for his

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<sup>1</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

untimely filing of his Brady claim in state court. He also asserts that his case meets the narrow exception to the cause-and-prejudice rule. However, McClintock did not raise the manifest-miscarriage-of-justice exception in his objections to the magistrate judge's report.

We have carefully reviewed the arguments and the appellate record. For the reasons relied upon by the district court, through its adoption of the magistrate judge's report, see McClintock v. Cain, No. 96-1678 (W.D. La. Feb. 19, 1997), we conclude that the district court did not err by dismissing the habeas petition because the claim is procedurally barred.

AFFIRMED.