

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-5612
Summary Calendar

EDWARD L. SMITH,

Plaintiff-Appellant,

VERSUS

WARDEN, LOUISIANA STATE PENITENTIARY,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-543)

(October 3, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:¹

Appellant is serving a life sentence in the Louisiana State Penitentiary for murder. He sought habeas relief under 28 U.S.C. § 2254 in the district court which was denied. The district court also denied a certificate of probable cause.

Smith contends, as he did in his prior federal habeas application, that his Sixth Amendment right to trial by jury drawn from a fair cross-section of the community was violated by the automatic exemption from jury service granted to women under

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Louisiana law at the time of his trial. We granted CPC because this court was considering that very issue en banc at the time. Wilkerson v. Whitley, 16 F.3d 64 (5th Cir. 1994).

This petition is successive since this precise issue was raised by Appellant in his earlier federal petition. The district court was, therefore, correct to dismiss it under Rule 9(b) and we affirm that decision.

Even if we were to reach the merits of the issue Appellant raises it would not profit Appellant because this court has recently decided the precise issue against him. Wilkerson v. Whitley, 28 F.3d 498 (5th Cir. 1994) (en banc).

AFFIRMED.