

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-00470

IN RE: TONY EPPS,

Movant.

Motion for an order authorizing
the United States District Court for the Southern
District of Texas to consider
a successive habeas corpus application

December 15, 1997

Before WIENER, BARKSDALE and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Tony Epps, Texas prisoner # 450886, has moved this court for an order authorizing him to file a successive 28 U.S.C. § 2254 habeas corpus application in the district court. Epps asserts that his counsel was ineffective because he erroneously informed him that he could receive probation, insisted that he waive his right to jury trial, and caused him to reject the state's offer of a 45-year sentence. He also contends that the trial court abused its discretion at sentencing by admitting

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

evidence that proved elements not charged in the indictment, thus allowing proof of an essential element of the crime on an alternative basis, which he admits is permitted by statute.

Epps does not make a prima facie showing that his successive § 2254 habeas corpus application is based on newly discovered evidence or on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. See 28 U.S.C. § 2254(b)(2). Therefore, Epps' motion for permission to file a successive § 2254 application is DENIED.