

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-30008  
Summary Calendar

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JOSEPH CONRAD,

Petitioner-Appellant,

VERSUS

BURL CAIN, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 98-CV-1866-H  
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August 18, 1999

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges

PER CURIAM:\*

Joseph Conrad, La. prisoner #106020, appeals the denial of his pro se habeas corpus petition, filed pursuant to 28 U.S.C. § 2254. Conrad argues that he was subject to vindictive prosecution and resentencing. In his reply brief, Conrad also moves for expansion of his certificate of appealability ("COA").

In his attempt to establish vindictiveness, Conrad relies exclusively on conclusional statements. Accordingly, he has not carried his burden, by a preponderance of the evidence, that the prosecutor acted vindictively. See United States v. Cooks, 52 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

101, 105-06 (5th Cir. 1995); United States v. Krezdorn, 718 F.2d 1360, 1365 (5th Cir. 1983)(en banc). Conrad was also not subject to vindictive resentencing because his second sentence was less harsh than his first sentence. See United States v. Moore, 997 F.2d 30, 38 (5th Cir. 1993). Further, Conrad may not move to expand his COA in his reply brief. See United States v. Kimler, 150 F.3d 429, 431 (5th Cir. 1998); United States v. Prince, 868 F.2d 1379, 1386 (5th Cir. 1989).

AFFIRMED; MOTION TO EXPAND COA DENIED.