

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30681
Conference Calendar

GERALD BAILEY,

Petitioner-Appellant,

versus

BURL CAIN, Warden, Louisiana
State Penitentiary,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 98-CV-2775-J

April 11, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges

PER CURIAM:*

Gerald Bailey, Louisiana state prisoner # 99688, appeals the denial of his petition under 28 U.S.C. § 2254 for habeas corpus relief. The district court granted Bailey a certificate of appealability ("COA") as to the issue whether the instructions given at his jury trial regarding reasonable doubt unconstitutionally raised the degree of doubt required for acquittal.

Bailey has failed to demonstrate that the jury instructions given at his trial regarding reasonable doubt were

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

constitutionally infirm. Although Bailey attempts to rely on Cage v. Louisiana, 498 U.S. 39 (1990) and Humphrey v. Cain, 138 F.3d 552 (5th Cir.)(en banc), cert. denied, 525 U.S. 935 (1998), the language contained in his jury instructions was not the same as the language held to be unconstitutional in the above cases.

Bailey argues that his attorney rendered ineffective assistance at trial. The district court's COA did not include this issue, and Bailey has not requested an additional COA. This court will not consider the ineffectiveness argument. Lackey v. Johnson, 116 F.3d 149, 151 (5th Cir. 1997).

The decision of the district court denying Bailey's petition for habeas relief is AFFIRMED.