

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2268

David Simmons,

Appellant,

v.

Paul Caspari,

Appellee.

*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
Eastern District of Missouri.

[UNPUBLISHED]

Submitted: December 28, 2001

Filed: January 10, 2002

Before HANSEN, FAGG, and BEAM, Circuit Judges.

PER CURIAM.

In 1991, a Missouri state court jury convicted David Simmons of second degree murder and first degree burglary, and the state trial court sentenced him to consecutive terms of life and 15 years imprisonment. After the denial of his appeal and post-conviction motions, see State v. Simmons, 865 S.W.2d 893 (Mo. Ct. App. 1993), he filed a petition under 28 U.S.C. § 2254, alleging, among other things, that appellate counsel was ineffective for not arguing that the state had violated Missouri's speedy trial statute. See Mo. Rev. Stat. §§ 217.450, 217.460 (2000). The

district court¹ denied the petition, and we granted a certificate of appealability on the issue.

After careful review of the record, we conclude that Simmons' appellate counsel was not ineffective for failing to raise the speedy trial issue because the argument lacks merit. See Grubbs v. Delo, 948 F.2d 1459, 1464 (8th Cir. 1991), cert. denied, 506 U.S. 835 (1992); State v. Allen, 954 S.W.2d 414, 417 & n.2 (Mo. Ct. App. 1997). Accordingly, we affirm the judgment of the district court and deny Simmons' pending motion as moot.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable Charles A. Shaw, United States District Judge for the Eastern District of Missouri, adopting the report and recommendations of the Honorable Frederick R. Buckles, United States Magistrate Judge for the Eastern District of Missouri.