

United States Court of Appeals  
FOR THE EIGHTH CIRCUIT

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No. 96-3560

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Sidney Carl Vann,  
Appellant,  
v.  
Frank X. Hopkins,  
Appellee.

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\* Appeal from the United States  
\* District Court for the  
\* District of Nebraska.  
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\* [UNPUBLISHED]  
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Submitted: June 10, 1997  
Filed: June 13, 1997

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Before MURPHY and HEANEY, Circuit Judges, and BOGUE,<sup>1</sup> District Judge.

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PER CURIAM.

Sidney Vann appeals from the denial by the district court<sup>2</sup> of his petition for habeas relief under 28 U.S.C. § 2254. Vann was convicted in Nebraska of possession with intent to deliver a controlled substance and sentenced as a habitual offender to 15

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<sup>1</sup>The Honorable Andrew W. Bogue, United States District Judge for the District of South Dakota, sitting by designation.

<sup>2</sup>The Honorable Warren K. Urbom, United States District Judge for the District of Nebraska.

to 25 years in prison. The police found drugs in plain view after gaining access to Vann's hotel room on an arrest warrant for theft charges. Vann claims his constitutional rights were violated by the failure of the state court to suppress the drugs because they were found and seized as a result of pretext and by the failure of trial and appellate counsel to litigate his Fourth Amendment claims effectively. The police did not violate Vann's rights because they had an objective legal justification to proceed on the arrest warrant which led to the discovery of the drugs, United States v. Cummins, 920 F.2d. 498, 501 (8th Cir.), cert. denied, 502 U.S. 962 (1991), and Vann was therefore not prejudiced by the representation of his counsel. See Kimmelman v. Morrison, 477 U.S. 365 (1986). The judgment is affirmed.

A true copy.

Attest:

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