

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 91-7378  
Summary Calendar  
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JARVIS SEMMES WOLFE,

Petitioner-Appellant,

versus

STEVE W. PUCKETT, Superintendent,  
Mississippi State Penitentiary,

Respondent-Appellee.

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Appeal from the United States District Court for the  
Northern District of Mississippi

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July 22, 1993

Before GARWOOD, JONES and EMILIO M. GARZA, Circuit Judges.\*

GARWOOD, Circuit Judge:

Plaintiff-appellant Jarvis Semmes Wolfe (Wolfe) appeals the denial of his petition for habeas corpus relief from his 1986 Mississippi state court convictions for kidnapping and aggravated assault. Wolfe contends on appeal that his guilty plea was not

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

freely and voluntarily entered and that he was denied effective assistance of counsel during the plea process. We affirm.

### **Facts and Proceedings Below**

In February 1986, after petitioning the state trial court to accept his plea, Wolfe entered a guilty plea to charges of kidnapping and aggravated assault. The guilty plea colloquy between Wolfe, the state trial judge, and Wolfe's counsel went as follows:

"BY THE COURT: . . . Mr. Wolfe, back on January the 13th, 1986, you waived arraignment and entered pleas of not guilty to these charges, and today, you've petitioned the Court to accept pleas of guilty. *Have you fully discussed this with your lawyer, Mr. Doxey, and you[r] lawyer, Mr. Jones?*

BY MR. WOLFE: I've discussed it with Mr. Ki, Mr. Jones.

BY THE COURT: Okay, and do you feel like you fully understand what you're doing?

BY MR. WOLFE: Yes, sir.

BY THE COURT: *I'm sure he's told you if the Court accepts this plea what the maximum and minimum sentences are on the charges?*

BY MR. WOLFE: Yes, sir.

BY THE COURT: And you fully understand that?

BY MR. WOLFE: Yes, I do.

BY THE COURT: You do understand that before a judgment of conviction could be entered against you that you have a right to have twelve qualified jurors placed in the jury box, and the burden is on the State to prove you guilty beyond a reasonable doubt to the satisfaction of each and every one of the jurors as to the elements of the crime, and if they convict you, you'd have an appeal to the State Supreme Court or other Appellate Court relative to any errors that this Court might have committed in the trial of this case. But now if I accept your pleas on this petition to these two charges and

enter judgments in those two charges, those are full and final judgments. You're waiving all rights of appeal. You understand that?

BY MR. WOLFE: Yes, I understand.

BY THE COURT: Knowing that, do you still desire to offer your pleas of guilty to the Court?

BY MR. WOLFE: Yes, Sir.

BY THE COURT: *Now, you were served with copies of the indictments and you know what you were charged with in each of the charges.*

BY MR. WOLFE: Yes, sir.

BY THE COURT: And you understand that. *Mr. Jones has explained to you each essential element of the crime. Did you commit those crimes?*

BY MR. WOLFE: Yes, sir.

BY THE COURT: All right. The Court accepts your pleas of guilty. . . ." (Emphasis added).

Wolfe was sentenced to serve twenty-four years of imprisonment on the kidnapping conviction concurrent with a twenty year sentence for the aggravated assault conviction.

In 1988, Wolfe filed a motion for post-conviction relief in the state trial court alleging that the guilty plea was not voluntarily given and that he was denied effective assistance of counsel at trial. Following an evidentiary hearing to evaluate Wolfe's claims,<sup>1</sup> the state trial court denied Wolfe's motion.

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<sup>1</sup> At the hearing, Wolfe's trial attorney testified that he had informed Wolfe of his rights, of the maximum and minimum penalties, and of the essential elements of the crimes with which he was charged. *See Buckley v. Butler*, 825 F.2d 895, 900 (5th Cir. 1987), *cert. denied*, 108 S. Ct. 1738 (1988) (claim of plea involuntariness may be rebutted by post-conviction testimony that defense counsel had in fact informed defendant of his rights where plea record insufficient). At the hearing, counsel also denied Wolfe's allegation that counsel had told Wolfe

Wolfe appealed this decision to the Mississippi Supreme Court, which affirmed the trial court's order without written opinion.

Wolfe then filed a petition for habeas corpus relief in the district court below under 28 U.S.C. § 2254 contending that his plea was not voluntarily given. Wolfe's habeas petition did not contain a factual or legal allegation of ineffective assistance of counsel. Wolfe used the standard habeas petition form supplied by the Federal District Court. Wolfe stated in Section 11 of the form, which calls for a description of previous suits by petitioner, that he had raised ineffective assistance of counsel as a claim in his state court Motion to Vacate Conviction and Sentence. However, Wolfe did not allege ineffective assistance as a ground for federal relief in section 12 of the form, which calls for a statement of the claims made in the present suit. Although the magistrate judge concluded that Wolfe's plea was not voluntarily given and recommended granting Wolfe's petition, the district court denied Wolfe's petition on the *Boykin* claim and on the unalleged ineffective assistance claim. The district court granted Wolfe a certificate of probable cause, and Wolfe appeals.

#### **Discussion**

On appeal, Wolfe first asserts that his guilty plea was not

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(erroneously) that the maximum penalty was death. There is no evidence in the record supporting Wolfe's allegation that he was misled as to the maximum penalty for his crimes. *Compare Davis v. Butler*, 825 F.2d 892, 894 (5th Cir. 1987) (Davis alleged enough facts to be entitled to an evidentiary hearing on whether counsel promised that Davis would be pardoned in three years in return for his plea). At the hearing, Wolfe again admitted his guilt.

knowingly, voluntarily, and intelligently made in violation of *Boykin v. Alabama*, 89 S.Ct. 1709 (1969).<sup>2</sup> Specifically, Wolfe claims that the trial court did not: advise him of his constitutional right to remain silent, advise him of his right to cross-examine adverse witnesses, advise him of the nature and consequences of his plea, read the charges or the indictment to him, advise him of the maximum and minimum penalties for the charged offenses, establish a factual basis for the guilty plea, or determine whether Wolfe was competent to stand trial or whether the plea was coerced.

To be constitutional, "a guilty plea `must not only be entered voluntarily, but also knowingly and intelligently: the defendant must be aware of the relevant circumstances and the likely consequences.'" *Hobbs v. Blackburn*, 752 F.2d 1079, 1081 (5th Cir.), *cert. denied*, 106 S. Ct. 117 (1985) (quoting *Diaz v. Martin*, 718 F.2d 1372, 1376 (5th Cir. 1983)). See *Boykin*, 89 S.Ct. at

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<sup>2</sup> In his original brief, Wolfe asserted that his plea was made in violation of Mississippi's Uniform Criminal Rules of Circuit Court Practice Rule 3.03 and Federal Rule of Criminal Procedure 11. It is unclear from Wolfe's reply brief whether or not he later abandoned this argument. Regardless, it is clear that federal habeas relief cannot be granted to state-convicted prisoners for violations of state law. *Dickerson v. Guste*, 932 F.2d 1142, 1145 (5th Cir.), *cert. denied*, 112 S.Ct. 214 (1991); *Fierro v. Lynaugh*, 879 F.2d 1276, 1278 (5th Cir. 1989), *cert. denied*, 110 S. Ct. 1537 (1990) (federal courts defer to state interpretations of state law). Similarly, state courts are not bound to follow the Federal Rules of Criminal Procedure, so federal habeas relief is unavailable under this theory. See *Frank v. Blackburn*, 646 F.2d 873, 882 (5th Cir. 1980), *cert. denied*, 102 S. Ct. 148 (1981). Thus, only violations of the United States Constitution would entitle Wolfe, a state-convicted inmate, to federal habeas relief.

1712.<sup>3</sup> A guilty plea will be upheld as long as there is an affirmative showing on the record that the defendant was aware of the constitutional rights waived by the entry of the guilty plea. It is unnecessary for the judge to personally and explicitly inform the defendant of his constitutional rights. *Buckley*, 825 F.2d at 899-900; *Davis v. Butler*, 825 F.2d 892, 893 (5th Cir. 1987) (no evidence defense counsel misled defendant in recommending plea); *Barksdale v. Blackburn*, 670 F.2d 22, 25 (5th Cir.), cert. denied, 102 S.Ct. 2912 (1980); *Henderson v. Morgan*, 96 S.Ct. 2253, 2258-59 (1976). Thus, for example, "[t]he plea will be upheld even if the state trial judge fails to explain the elements of the offense, provided it is shown by the record, . . . , that the defendant understood the charge and its consequences." *Hobbs*, 752 F.2d at 1081.<sup>4</sup> This may be shown post-conviction. See *Buckley* at 900 and

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<sup>3</sup> The constitutional standard of voluntariness for pleas differs from that required under Federal Rule of Criminal Procedure 11 and Mississippi's Rule of 3.03. These statutory standards, which may be stricter than the constitutional standard, do not apply in state habeas cases brought in federal court.

<sup>4</sup> In *Gilliard v. Scroggy*, 847 F.2d 1141, 1143 (5th Cir. 1988), cert. denied, 109 S. Ct. 818 (1989), we stated that "the state trial judge must, at a minimum, inform the defendant of the critical elements of the crime . . . ." Wolfe argues that *Gilliard* requires that the trial judge personally inform the defendant of the consequences of a guilty plea. However, *Gilliard* did not hold that the trial court must personally inform the defendant of his rights. The reference in *Gilliard* to the "state trial court" was only dicta inasmuch as the issue in that case was whether conflicting answers during the plea colloquy showed that the defendant's plea was not knowingly made. The reference is also contrary to a long line of cases in this Circuit expressly holding that the judge need not personally inform the defendant of his rights. See *supra*. We observe that *Gilliard* cites *Henderson* for this proposition; however, *Henderson* suggested that defense counsel could sufficiently advise a

note 1 *supra*.

The record before us shows that the trial court assured itself that Wolfe understood the nature and consequences of his plea and the rights waived by entry of the plea. Wolfe stated in open court that he had fully discussed pleading guilty with his lawyer, that he fully understood what he was doing, that his lawyer had explained to him what the maximum and minimum sentences were on the charges, and that his lawyer had explained to him "each essential element of the crime." Wolfe's counsel testified at the state court evidentiary hearing that he had informed Wolfe of the elements of the charged crimes, the possible penalties, and of his rights. The court specifically advised Wolfe that pleading guilty meant waiving his right to have the state prove his guilt to a jury and that he was waiving his right to appeal. Wolfe admitted in open court that he had committed the charged crimes. Wolfe also signed a petition filed with the state trial court stating that he understood the charges against him, that his plea was not coerced, and that he did, in fact, commit the charged offenses. This petition is strong evidence that Wolfe understood the effect of his plea because it is entitled to a presumption of regularity. *Hobbs*, 752 F.2d at 1081. The record shows that although the state trial court may not have personally advised Wolfe of his rights, Wolfe's counsel did. No evidence in the record suggests that Wolfe did not

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defendant of his rights and that the court itself need not do so. 96 S.Ct. 2258-59. Wolfe's reliance on *Gilliard* is misplaced. The rule in this Circuit continues to be the rule stated in the text accompanying this footnote.

know the nature and consequences of his guilty plea. It is true that the record does not reflect the factual basis of the crimes. However, the constitution, as interpreted by *Boykin* and its progeny, does not in these circumstances require that the trial court do this. *Hobbs* at 1082. Wolfe was sufficiently informed of the charges against him, their elements, the possible penalties, and his constitutional rights by the trial court and by his counsel for his plea to be constitutionally knowingly and intelligently made and for his waiver of rights to be voluntary, and he admitted his guilt when the plea was accepted (and thereafter). The district court did not err in finding that Wolfe's plea was not obtained in an unconstitutional manner.

On appeal, Wolfe next alleges that he was denied effective assistance of counsel at trial. We will not consider an issue raised for the first time on appeal<sup>56</sup> unless plain error is shown. *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1163 (5th Cir. 1992) ("We will consider an issue raised for the first time on appeal only if the issue is purely a legal issue and if consideration is necessary to avoid a miscarriage of justice.") (quoting *In re Goff*, 812 F.2d 931, 933 (5th Cir. 1987); *United*

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<sup>6</sup> *Johnson v. Puckett*, 930 F.2d 445, 448 (5th Cir. 1991), cert. denied, 112 S. Ct. 252 (1991) ("We have repeatedly held that a contention not raised by a habeas petitioner in the district court cannot be considered for the first time on appeal from that court's denial of habeas relief.").



*States v. Garcia-Pillado*, 898 F.2d 36, 39 (5th Cir. 1990).<sup>7</sup> Although the district court reviewed this matter in its memorandum opinion,<sup>8</sup> Wolfe failed to raise this claim below or to plead facts in support of this claim. See *Smith v. United States Parole Com'n*, 752 F.2d 1056, 1059 (5th Cir. 1985) (no factual record to determine if right violated). The government also had no opportunity to respond to the matter raised only by the district court. We see no plain error here, especially since we in any event agree with the district court's conclusion on this matter.

### **Conclusion**

Wolfe has not shown that his constitutional rights were violated during his state court plea proceedings. Accordingly, his petition for habeas corpus relief is denied and the judgment of the district court is

AFFIRMED.<sup>9</sup>

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<sup>7</sup> A claim that is raised unartfully or inadequately before the district court may be appealed where the district court reviews the claim. However, where a claim is not raised at all before the district court, the fact that the district court discusses the matter does not give the petitioner the right to appeal on the basis of such an unraised claim.

<sup>8</sup> The district court stated in footnote 1 of its opinion that it was reviewing Wolfe's ineffective assistance of counsel claim because it was raised in Wolfe's habeas petition even if it was not mentioned in the Magistrate's Report and Recommendation or in the parties' Objections to the Magistrate's Report. Evidently the district court must have misread Wolfe's habeas petition by construing Wolfe's statement that he raised the claim in a prior state proceeding as raising the claim in this federal proceeding. See *supra* text, at 2.

<sup>9</sup> Wolfe requested the appointment of counsel to help in this matter. Wolfe has presented his arguments well, making the

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appointment of counsel unnecessary. See generally *Lamb v. Estelle*, 667 F.2d 492, 497 (5th Cir. 1979); *Saahir v. Collins*, 956 F.2d 115, 118 (5th Cir. 1992).