

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3715
Conference Calendar

ROBERT A. KING,

Petitioner-Appellant,

versus

RICHARD P. IEYOUB, Attorney General,
State of Louisiana,

Respondent-Appellee.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA 92 1337 K
- - - - -

August 19, 1993

Before JOLLY, JONES, and DUHE, Circuit Judges.

PER CURIAM:*

Robert A. King argues that the district court erred by denying him federal habeas relief. King raises as an issue, but does not argue in his brief, the denial of his motion to quash the bill of information. Consequently, this issue has not been preserved for appellate review. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993); see also Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988) (although pro se briefs are liberally construed, arguments must nevertheless be briefed to be

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

preserved).

King argues that he was arrested pursuant to an illegal search. King also argues that the affidavit in support of the search warrant was insufficient and resulted in his arrest being "fruit of the poisonous tree."

Where a state prisoner has been provided the opportunity for "full and fair litigation of a Fourth Amendment claim[,] " habeas relief on the issue is foreclosed. Stone v. Powell, 428 U.S. 465, 482-83, 494, 96 S.Ct. 3037, 49 L.Ed.2d, 1067 (1976). The opportunity to present a Fourth Amendment claim, whether or not exercised, and whether or not successful, forecloses habeas review unless the prisoner alleges that the state process is "routinely or systematically applied in such a way as to prevent the actual litigation of [F]ourth [A]mendment claims on their merits." Williams v. Brown, 609 F.2d 216, 220 (5th Cir. 1980). King has not alleged that Louisiana procedure precluded a full and fair opportunity to litigate the claim. Review of these Fourth Amendment claims, therefore, is barred.

King argues that his conviction was the result of a violation of his rights under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). His argument amounts to a factual assertion that his Miranda rights were not read to him at the time of his arrest. King does not otherwise assert that his confession was involuntary.

"Miranda's prophylactic warnings are not constitutional rights in and of themselves." United States v. Harrell, 894 F.2d 120, 125 (5th Cir.), cert. denied, 498 U.S. 834 (1990) (citing

Oregon v. Elstad, 470 U.S. 298, 305, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985)). Detective Morse testified that he informed King of his Miranda rights at the time of King's arrest and at the police station. King's factual argument is not supported by the record, and his assertion of a technical violation of Miranda does not raise a constitutional question. Harrell, 894 F.2d at 125.

King argues that his rights were violated by a personal interest in the case by the prosecutor, because the prosecutor's name was still attached to a firm that had settled a civil suit against King prior to the criminal trial. King's argument raises only issues of state criminal procedure that do not give rise to a violation of federal constitutional dimension. See Lavernia v. Lynaugh, 845 F.2d 493, 496 (5th Cir. 1988). Because King's asserted violation is based on an alleged error of state law, this Court must determine whether there has been an infraction of King's due process rights that rendered his trial as a whole fundamentally unfair. Id. In order to prevail on this issue, King must show that the prosecutor had a personal, conflicting interest in the civil case. United States v. Heldt, 668 F.2d 1238, 1275-76 (D.C. Cir. 1981), cert. denied, 456 U.S. 926 (1982). The state trial court found that the prosecutor had no personal interest in the civil suit. Because that finding is supported by the record, it is accorded a presumption of correctness. King has not presented convincing evidence to rebut that presumption. 28 U.S.C. § 2254(d); Sumner v. Mata, 449 U.S. 539, 549-50, 101 S.Ct. 764, 66 L.Ed.2d 722 (1981).

AFFIRMED.