

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3906
Summary Calendar

ALAN MICHAEL GUY,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden, Louisiana
State Penitentiary, and RICHARD P.
IEYOUB, Attorney General, State of
Louisiana,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 91 2840 B)

(October 27, 1993)

Before POLITZ, Chief Judge, GARWOOD and BARKSDALE, Circuit Judges.

PER CURIAM:*

Alan Michael Guy, an inmate at the Louisiana State Penitentiary at Angola, Louisiana, seeks habeas corpus relief under 28 U.S.C. § 2254 from his convictions for armed robbery. The

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court denied relief and granted a certificate of probable cause to appeal. We affirm.

Guy complains of the admission of identification and other evidence, which he maintains was the fruit of an unconstitutional arrest. A fourth amendment claim, however, is not cognizable on collateral review in federal court if the state has provided an opportunity for a full and fair hearing.¹ Guy was afforded such an opportunity. The state trial court held an evidentiary hearing on his motion to suppress; after hearing the evidence, it denied the motion. On direct appeal, Guy's fourth amendment claim was considered and rejected by the Louisiana appellate court.² The treatment accorded fulfills the requirement for a full and fair hearing within the meaning of **Stone**.³ Guy asserts that his hearing was not fair because there was no evidence to support a finding of probable cause to arrest. This complaint goes to the merits of the state court's ruling, not to whether there was an adequate opportunity to litigate.⁴ We may not review this fourth amendment claim.

Guy also contests the admission of a videotape of one of the charged robberies, arguing that the trial court should have declared a mistrial. Advising that the videotape had been lost,

¹ **Stone v. Powell**, 428 U.S. 465 (1976).

² **State v. Guy**, 575 So.2d 429 (La.App.), writ denied, 578 So.2d 930 (La. 1991).

³ **Davis v. Blackburn**, 803 F.2d 807 (5th Cir. 1986).

⁴ See Swicegood v. Alabama, 577 F.2d 1322 (5th Cir. 1978).

the state did not deliver it to Guy's counsel until after *voir dire*, immediately before the start of trial. "A state court's evidentiary ruling presents a cognizable habeas claim only if it runs afoul of a specific constitutional right or renders the trial fundamentally unfair."⁵ Contrary to Guy's contentions, failure to produce the videotape earlier did not violate his rights under **Brady v. Maryland**⁶ because the videotape was not exculpatory. Nor did the admission of the videotape rise to the level of a due process violation. The videotape was not particularly "crucial, critical [or] highly significant,"⁷ given that Guy was positively identified as the robber by at least three of his victims. Moreover, in light of the overwhelming evidence of guilt, the admission of the videotape did not have the "substantial and injurious effect or influence in determining the jury's verdict" that would warrant habeas relief, even assuming *arguendo* that there was a due process violation.⁸

The denial of habeas relief is AFFIRMED.

⁵ **Pemberton v. Collins**, 991 F.2d 1218, 1226 (5th Cir. 1993), petition for cert. filed, _____ U.S.L.W. _____ (Aug. 25, 1993) (No. 93-5768).

⁶ 373 U.S. 83 (1963).

⁷ **Pemberton**, 991 F.2d at 1227.

⁸ **Pemberton**, 991 F.2d at 1226.