

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4300

MARTIAL D. ROACH,

Petitioner-Appellee,

VERSUS

JAMES A. COLLINS, Director,
Texas Department of Criminal Justice,
Institutional Division,

Respondent-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(6:91 CV 399)

January 5, 1992

Before REAVLEY, SMITH, and EMILIO M. GARZA, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

I.

The petitioner, Martial Roach, pleaded guilty to aggravated assault and received a fifteen-year sentence. He did not file a direct appeal but did file a state petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255. The Texas Court of Criminal

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

appeals remanded for an evidentiary hearing in the trial court. After that hearing, the Court of Criminal Appeals denied the writ without written opinion.

Roach then filed a petition for habeas relief in federal district court. The magistrate judge reviewed state court records and recommended that Roach be granted relief. After de novo review, the district court adopted the magistrate's findings and conclusions and ordered that a writ be issued. The state now appeals.

II.

The district court based its decision to grant the writ upon factual findings made in the state habeas proceeding. Roach was indicted for aggravated assault; the indictment further alleged two prior felony convictions. Roach pleaded guilty to aggravated assault and pleaded true to one of the enhancement counts. The state agreed that the judgment would not include an affirmative finding that Roach committed the offense with a deadly weapon. In this regard, the state trial court found as follows:

This Court also finds that the plea bargain agreement of the parties was that the Defendant would receive fifteen (15) years in the Texas Department of Criminal Justice Institutional Division. An additional agreement between the parties was that the Court would not make an affirmative finding of a deadly weapon. (Page 10, Paragraph 1 of the court reporters notes in the hearing when the plea was taken on May 29, 1990. Also, Page 39, Line six through nine of the court reporters notes of the hearing held on December 10th and December 12th.)

While the Judgment reflects that a separate affirmative finding was not made, it is obvious that such a finding was made upon the acceptance of the Defendant's plea of

guilty to the offense of aggravated assault as alleged in the indictment. The only thing in the indictment that makes this offense a felony is that "a deadly weapon" is alleged to have been used. An assault becomes aggravated by either (1) a serious bodily injury occurring or (2) a deadly weapon being used. Since this indictment does not allege a "serious bodily injury" the aggravated factor is "a deadly weapon" allegation.

From reviewing all of the court reporters notes and from listening to the testimony it is clear that what the parties plea bargained for could not be accomplished with this indictment. Had the Court deleted the deadly weapon finding then the indictment would only have alleged a misdemeanor and had this been done then the plea bargain agreement of fifteen (15) years could not have been possible.

The magistrate judge concluded, "Based upon the trial court's explicit finding that the plea bargain agreement was not and could not have been honored, I have made an independent review of Petitioner's claim that his guilty plea was involuntary."

III.

State factual findings are entitled to a presumption of correctness in federal habeas proceedings even where the state's highest court reverses the state trial court's granting of relief. Cracker v. Procunier, 756 F.2d 1212, 1214 (5th Cir. 1985). Legal conclusions drawn from those facts, however, are not entitled to that same presumption. See Sumner v. Mata, 455 U.S. 591 (1982). On questions of state law, normally we should defer to state interpretations, absent extraordinary circumstances. On constitutional issues, however, we exercise our own legal judgment. Id.

Applying those principles to the facts of this case, we think the federal district court erred in granting relief. Obviously,

the Texas Court of Criminal Appeals applied Texas law and, based upon that interpretation, denied Roach relief. Although that court did not issue an opinion, it must have disagreed with the legal conclusion of the federal district court in denying relief. As we read the prior decisions of the Court of Criminal Appeals, the federal district court should not have granted relief but should have given due deference to the Texas Court of Criminal Appeals's rejection of Roach's legal argument.

The state habeas trial court found that Roach had struck a plea bargain that obligated the trial court not to make an affirmative finding that Roach had used a deadly weapon in committing the crime. Based upon this factual finding, both the state habeas trial court and the federal district court reached the legal conclusion that the trial court had made an affirmative finding simply by accepting the guilty plea for aggravated assault. After reviewing Texas case law, we believe the federal district court erred in accepting that legal conclusion.

Roach's indictment charged him with stabbing the victim with "a deadly weapon, to wit: a knife." Under these circumstances, an "affirmative finding is de facto made when the defendant is found guilty `as charged in the indictment.'" Polk v. State, 693 S.W.2d 391, 394 (Tex. Crim. App. 1985).

Even in such cases, however, the court does not legally make an affirmative finding unless the court enters this finding "separately and specifically in the judgment of the court." Ex parte Brooks, 722 S.W.2d 140, 142 (Tex. Crim. App. 1986) (citing

Tex. Code Crim. Proc. Ann. art. 42.12, § 3f(a)(2) (West 1979). In other words, the plea in this case would have allowed the trial court properly to enter an affirmative finding that Roach used a deadly weapon, but the judge had to make that finding separately and specifically, in the judgment, before it legally could be deemed an affirmative finding. See Polk, 693 S.W.2d at 396. We conclude that Roach received what he bargained for, so the district court should not have granted relief.

IV.

We VACATE the district court's award of habeas relief and REMAND for consideration of Roach's additional grounds for relief. On remand, the district court may wish to address each ground for relief, in order to avoid potential piecemeal appellate proceedings.