

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 92-8491  
Summary Calendar

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WESLEY MARION HINDS,

Petitioner-Appellant,

VERSUS

JAMES A. COLLINS, Director  
Texas Dept. of Criminal Justice  
Institutional Division, ET AL.,

Respondents-Appellees.

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Appeal from the United States District Court  
For the Western District of Texas

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CA W91 368

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June 11, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

**BACKGROUND**

Wesley Marion Hinds, currently a prisoner in the Michael Unit of the Texas Department of Criminal Justice, pleaded guilty to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

murder and was sentenced to serve 45 years in prison. He did not appeal his conviction, and the Texas Court of Criminal Appeals later denied his application for a state writ of habeas corpus without written order.

Proceeding pro se and in forma pauperis Hinds then filed a petition for a writ of habeas corpus in federal court. The magistrate judge recommended denying the petition and, over Hinds's objections, the district court adopted the magistrate judge's report and recommendation and denied the petition. The district court granted Hinds a certificate of probable cause.

#### OPINION

Hinds challenges the validity of his guilty plea, arguing that it was not intelligent or voluntary, and that it should not have been accepted by the trial court. In particular, he contends that the state's plea offer was invalid because it contained the stipulation that the trial court would make an affirmative finding that Hinds used a deadly weapon during the commission of the crime. Because he pleaded guilty only as a party to murder, and not as the primary actor, Hinds argues that under Texas law the state could not offer, he could not agree to, and the trial court could not accept, a guilty plea containing the affirmative finding that he caused the death of another by use of a deadly weapon.

Hinds's argument fails because the Texas caselaw which he cites as the basis of his argument is inapposite to the instant case. He relies on Travelstead v. State, 693 S.W.2d 400 (Tex. Crim. App. 1985), and Ex Parte Adkins, 767 S.W.2d 809 (Tex. Crim.

App. 1989) (en banc), for the proposition that an affirmative finding that a deadly weapon was used invalidates a guilty plea where the defendant pleaded guilty as a party to the offense, and not as a primary actor. In so holding, however, the court in Travelstead noted only that a trial court must make it clear that "the defendant, and not another party, [must] use or exhibit the deadly weapon." Travelstead, 693 S.W.2d at 402. The record establishes that Hinds used the deadly weapon: Hinds specifically testified during his guilty plea hearing that he used a knife during the commission of the crime, and he entered a full judicial confession to the indictment, which specifically alleged that he used a deadly weapon to intentionally cause the death of another.

In Adkins the court noted, first, that it was clear from the record and the face of the judgment that the defendant had pleaded guilty to the offense only as a party, and not as a primary actor. The court also found that the trial judge "went to great pains" to ensure that the defendant knew he was pleading guilty to the murder only as a party to the murder, and not as the actual "triggerman." Finally, the court set the plea agreement aside because the record was "replete with evidence that applicant, as a mere party to the offense, never `used or exhibited a deadly weapon.'" Adkins, 767 S.W.2d at 811. The affirmative finding that the defendant used a deadly weapon, therefore, was erroneous, despite its inclusion in the original plea agreement. Id.

In the instant case, on the other hand, the record, face of the judgment, and guilty plea colloquy, all indicate that Hinds

pleaded guilty to the crime as a primary actor. The affirmative finding that he used a deadly weapon was therefore not erroneous.

Hinds's guilty plea was also valid under federal standards. Under Boykin v. Alabama, 395 U.S. 238, 244, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), before a trial court may accept a guilty plea it must ascertain that the defendant "has a full understanding of what the plea connotes and of its consequences." A plea will be deemed voluntary and valid unless the defendant "has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt." Henderson v. Morgan, 426 U.S. 637, 645 n.13, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976); see also Davis v. Butler, 825 F.2d 892 (5th Cir. 1985). In Gilliard v. Scroggy, 847 F.2d 1141 (5th Cir. 1988), cert. denied, 488 U.S. 1019 (1989), this Court stated that "[t]o satisfy due process, the state trial judge must, at a minimum, inform the defendant of the critical elements of the crime to ensure that he receives `real notice of the true nature of the charge against him.'" Id. at 1143 (quoting Henderson, 426 U.S. at 645).

A review of the guilty plea colloquy in the instant case reveals that Hinds was fully and adequately informed of the charge against him, including the key elements which he now challenges. In particular, the trial court informed Hinds that an affirmative finding could be made that Hinds used or exhibited a deadly weapon during the commission of the crime, and that such a finding could adversely affect his eligibility for parole. Moreover, as noted

above, Hinds specifically testified during his guilty plea hearing that he used a deadly weapon during the commission of the crime.

In addition, the indictment, to which Hinds fully confessed, charged that Hinds "intentionally and knowingly cause[d] the death of an individual . . . by cutting and stabbing him with a knife." This judicial confession, as well as Hinds's testimony, belies Hinds's contention that he thought he was pleading guilty only as a party to the offense, and not as a primary actor.

In a related argument, Hinds contends that the district court improperly refused to accept the affidavits of his parents into evidence. He argues that these affidavits establish that he believed that he was pleading guilty only as a party to the offense, and not as a primary actor. A careful reading of these affidavits, however, establishes only that Hinds's parents believed that Hinds acted as a "follower" in the crime, and was not the principle cause of the decedent's death. The affidavits do not speak to the plea agreement reached between Hinds and the State.

Hinds also argues that the district court erroneously failed to conduct an evidentiary hearing to evaluate the merits of his claim that he was convicted only as a party to the offense, and not as a primary actor. A federal habeas petitioner is not entitled to an evidentiary hearing where the record is complete or the petitioner raises only legal claims which may be resolved by reference to the existing record. Lavernia v. Lynaugh, 845 F.2d 493, 501 (5th Cir. 1988). The issue upon which Hinds sought an evidentiary hearing is the same issue he has raised on appeal. It

is apparent from the preceding discussion that the existing record is adequate to address that claim. Thus, an evidentiary hearing is unnecessary. See Bridge v. Lynaugh, 838 F.2d 770, 776 (5th Cir. 1988).

Finally, Hinds alleges that the district court erred when it declined to address his claim that he has been denied equal protection of the law. He contends that he is entitled to the same relief as the defendant in Adkins, and the failure of the district court to grant him such relief constitutes a violation of his equal protection rights. As was demonstrated previously, however, Hinds's case is factually distinguishable from Adkins. He is therefore not "similarly situated" to the defendant in Adkins. See Cunningham v. Beavers, 858 F.2d 269, 272 (5th Cir. 1988), cert. denied, 489 U.S. 1067 (1989).

We AFFIRM the judgment of the district court denying the petition for a writ of habeas corpus.