

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3418
Summary Calendar

ELDRIDGE MITCHELL,

Petitioner-Appellant,

VERSUS

JOHN P. WHITLEY, Warden,
Louisiana State Penitentiary,

Respondent-Appellee.

Appeals from the United States District Court
for the Eastern District of Louisiana
(CA 93-197 "J" (4))

(September 8, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Eldridge Mitchell appeals, *pro se* and *in forma pauperis*, the district court's dismissal with prejudice of his petition for habeas relief under 28 U.S.C. § 2254. We **AFFIRM**.

I.

Mitchell, serving a 33-year sentence for armed robbery, filed an application for habeas relief under 28 U.S.C. § 2254 in February 1993. He challenged the voluntariness of a guilty plea, entered in

¹ 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 Pursuant to that rule, the court has determined that this opinion should not be published.

1982, that was used to enhance his armed robbery sentence, claiming that the plea was constitutionally defective. Mitchell also assigned as error "all errors patent on the face of the record."

The district court, after reviewing the entire record, concluded that Mitchell's point of error and other possible issues mentioned in his pleadings were meritless. It therefore dismissed Mitchell's habeas petition with prejudice. When Mitchell appealed, and the district court granted a certificate of probable cause.²

On July 20, 1993, the district court granted Mitchell's request to proceed *in forma pauperis* on appeal. That same day, this court dismissed Mitchell's appeal for want of prosecution because he failed to pay the docketing fee timely; his motion to reinstate the appeal was granted.³

² Within ten days after entry of judgment, Mitchell also filed a "Motion in the Objection to the Above Court's Ruling and Judgment in Denying Petitioner's Writ with Prejudice". Mitchell asserted that the district court "oversighted [sic] or bridgeover [sic] or misunderstood the Constitutional violations." The record does not include a ruling on this motion.

A motion to amend or alter the judgment served within ten days of entry of judgment will be construed as a motion under Fed. R. Civ. P. 59(e), regardless of its denomination. **Harcon Barge, Co. v. D & G Boat Rentals, Inc.**, 784 F.2d 665, 667 (5th Cir.) (en banc), *cert. denied*, 479 U.S. 930 (1986). The motion in question, however, cannot be construed as a Rule 59(e) motion; it was not served upon the respondent, as required by that Rule and Fed. R. Civ. P. 5(a), and it did not request that the judgment be altered or amended. Accordingly, the notice of appeal was timely.

³ Mitchell also requests that counsel be appointed for this appeal. Because we affirm the denial of habeas relief, see *infra*, Mitchell's request is **DENIED** as moot.

II.

A.

Mitchell contends principally that the trial court that conducted the 1982 plea hearing did not comply with **Boykin v. Alabama**, 395 U.S. 238, 244 (1969). He asserts that he did not knowingly and voluntarily waive his right to remain silent because he did not know that his "right against self[-]incrimination" meant the right to remain silent, and "he did not know that he did not have ... to prove anything". These contentions are meritless.

A federal habeas court will uphold a guilty plea if it was knowing, voluntary, and intelligent. **Hobbs v. Blackburn**, 752 F.2d 1079, 1081 (5th Cir.), *cert. denied*, 474 U.S. 838 (1985). Before accepting a guilty plea, a trial court must ascertain that the defendant "has a full understanding of what the plea connotes and of its consequence." **Boykin**, 395 U.S. at 244. A defendant's solemn declarations during a plea hearing "carry a strong presumption of verity." **Blackledge v. Allison**, 431 U.S. 63, 74 (1977).

The record demonstrates that Mitchell fully understood his plea and its consequences. The transcript of the plea hearing reflects that he was charged with armed robbery (No. 81-3113) and with seven counts of burglary (Nos. 81-3192 and 81-4261). Pursuant to the plea agreement, the armed robbery charge was reduced to simple robbery; five of the seven burglary charges were dismissed. Mitchell stated twice during the hearing that he understood the agreement.

Also pursuant to the plea agreement, Mitchell was to receive a sentence of five years on each of the three counts of conviction, with the sentences to run concurrently. He stated that he understood this, also; and that he had discussed all this "thoroughly" with his retained counsel.

The trial court then read from a "Boykin[]" form", informing Mitchell that his attorney had explained to the court that Mitchell had been advised of: his rights to trial by jury and to confront any accusers; his right against self-incrimination; his rights to refuse to testify and to refuse to present evidence of any kind; the State's burden to prove everything; and that by entering a guilty plea, he would be waiving those rights. Mitchell confirmed that he understood. The court then explained to Mitchell the different offenses to which he was pleading guilty, and their maximum sentences. Mitchell affirmed that he understood.

Afterwards, the court asked Mitchell whether it was his sole decision to plead guilty, and whether anyone had used force or coercion against, or promises or rewards to, him or his family to cause the plea. Mitchell stated that he understood that the decision was his alone, and indicated that no one had coerced him or his family to make him plead guilty. The court again explained Mitchell's sentence to him. The court reiterated that Mitchell had the right to a jury trial, to hire an attorney, and to an attorney if he could not afford to hire one. Mitchell stated that he understood his sentence and that he waived those rights.

The court also explained again that at a jury trial Mitchell would have the right to confront his accusers, and that even if he chose to go to trial and were found guilty, he would have the right to appeal. Mitchell said he understood that he waived those rights also. The court explained that by pleading guilty, Mitchell was waiving any objections regarding his arrest, any searches or seizures, confessions, or lineups. Mitchell indicated that he understood this waiver. The court then asked Mitchell and his attorney to sign the "Boykin form" indicating that they understood.

In sum, Mitchell's guilty plea was knowing, voluntary, and intelligent. See **Hobbs v. Blackburn**, 752 F.2d at 1081. His assertion that his attorney "waived all [his] constitutional rights" ignores Mitchell's repeated waiver of those rights. Furthermore, his assertion that his counsel never verified that he had explained the rights to Mitchell ignores the trial court's detailed explanation of those same rights.

B.

Mitchell also assigns as error "any and all errors patent on the face of the record". This court does not address issues that are not properly and adequately raised and briefed. See **Brinkmann v. Dallas County Deputy Sheriff Abner**, 813 F.2d 744, 748 (5th Cir. 1987). Accordingly, we do not address this contention.

C.

Mitchell also contends, by supplemental and amended brief, that he was denied due process at a "multiple bill hearing" on case number 87-1004 in 1988. This contention is unintelligible;

further, it is raised for the first time on appeal. Ordinarily, we will not address issues not raised in district court. See, e.g., **Varnado v. Lynaugh**, 920 F.2d 320, 321 (5th Cir. 1991) ("[I]ssues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." (internal quotation marks and citation omitted)).

III.

For the foregoing reasons, the denial of habeas relief is

AFFIRMED.