

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3791  
(Summary Calendar)

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RICHARD LEE,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA-93-2423-M-3)

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(June 28, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Petitioner-Appellant Richard Lee, a state prisoner serving a sentence in the Louisiana State Penitentiary, appeals the denial of his federal habeas corpus petition under 28 U.S.C. § 2254. He

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

alleges as grounds for federal habeas his trial court's failure to comply with the rule of Boykin v. Alabama<sup>1</sup> in connection with acceptance of Lee's plea of guilty, and his due process claim grounded in self-incrimination. Finding no reversible error in the district court's denial of Lee's habeas petition, we affirm.

## I

### FACTS AND PROCEEDINGS

In 1988, Lee pleaded guilty in state court to an amended bill charging illegal possession of stolen things having a value of more than \$500. Two months later he pleaded guilty to a multiple offender bill. Lee was sentenced to imprisonment for nine years at hard labor without benefit of probation, parole, or suspension of sentence. The state Court of Appeal deleted the "without benefit . . ." portion of the sentence. Lee's state applications for post-conviction relief were denied. Lee v. State, 610 So. 2d 813 (La. 1993) (writ denial without opinion); State v. Lee, 596 So. 2d 549 (La. 1992) (writ denial without opinion).

Lee then petitioned for a federal writ of habeas corpus, and the state responded. The district court dismissed the petition with prejudice, but granted IFP and CPC.

## II

### ANALYSIS

As to each issue, we seek to determine whether the petitioner has shown a federal constitutional violation and prejudice. 28 U.S.C. § 2254(a); Carter v. Lynaugh, 826 F.2d 408, 409 (5th Cir.

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<sup>1</sup> 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

1987), cert. denied, 485 U.S. 938 (1988).

A. Boykin Claim: Right to Confrontation

As he did in his habeas petition, Lee argues that, when he pleaded guilty to the possession charge, the trial court did not advise him of his right of confrontation or tell him that a guilty plea would waive that right. "[T]he Supreme Court ruled that when a plea of guilty is entered in a state court criminal trial, several constitutional rights are waived. These include the privilege against compulsory self-incrimination, the right to trial by jury and the right of confrontation." Johnson v. Puckett, 930 F.2d 445, 449 (5th Cir.) (citing Boykin, 395 U.S. at 242-43).

Boykin does not require the trial court to address each of the three rights explicitly before accepting a guilty plea. Boykin does require the record to show affirmatively that the defendant pleaded guilty knowingly and voluntarily. Buckley v. Butler, 825 F.2d 895, 899-900 (5th Cir. 1987), cert. denied, 486 U.S. 1009 (1988); Neyland v. Blackburn, 785 F.2d 1283, 1287 (5th Cir.), cert. denied, 479 U.S. 930 (1986).

Lee was accompanied by counsel when he pleaded guilty to the possession charge on October 17, 1988. The trial court addressed the following items in a colloquy with Lee, who said that he understood each item: The maximum sentence is ten years at hard labor and, as a multiple offender, the maximum would be 20 years; a guilty plea means that Lee gives up the right against self-incrimination and that, were a trial to be held, the state would have to prove guilt; Lee gives up the rights to be tried by a judge

or jury, to appeal if convicted, and to compel the presence of favorable witnesses.

The court asked Lee if anyone had used force, threats, intimidation, or promises to exact the plea, to which Lee answered in the negative. In response to other questions, Lee said that he was satisfied with counsel's performance, that he had no questions for the court about the plea, that he understood the proceedings, and that the plea resulted from a plea bargain. Lee was sentenced to nine years of imprisonment.

True, the court did not expressly address Lee's right of confrontation. On the same date, however, the judge, Lee, and defense counsel signed a "Plea of Guilty" form, on which Lee initialed a line that states, "I understand that in pleading guilty in this matter I waive the following rights: . . . (2) To face and cross-examine the witnesses who accuse me of the crime charged."

Lee alleges that counsel did not explain that line to him. On the same form and in court, however, Lee stated that he was satisfied with counsel's representation. "Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible." Blackledge v. Allison, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Lee's assertion does not overcome the presumed truth of his statements in court.

All of the court's questions and Lee's affirmative responses

on the form and in the colloquy point to the knowing and voluntary nature of the plea. Consequently, the failure of the trial court specifically to address the right of confrontation in the colloquy does not provide a ground for a writ of habeas corpus.

B. Self-incrimination

As he did in his habeas petition, Lee argues that the trial court did not advise him of his right to remain silent before he pleaded guilty to the multiple offender bill. The right against self-incrimination is one of the rights addressed in Boykin. Johnson, 930 F.2d at 449. In federal habeas review of sentence enhancement proceedings, however, the Boykin trilogy of rights is not at issue but, rather, the totality of the circumstances must show that the defendant was not denied due process. Buckley, 825 F.2d at 902-04.

Various factors may be examined. For example, the court may inquire whether the multiple bill hearing was temporally and functionally related to the guilty plea hearing and whether counsel had advised the defendant; or the court may consider the contents of the hearing and whether the defendant actually had the prior convictions as admitted. In short, the court inquires whether the defendant knew what he was admitting and intended to admit it.

Lee argues that Louisiana law requires that he be informed of the right against self-incrimination. Errors of state law and procedure, however, are not cognizable unless they result in the violation of a federal constitutional right. Bridge v. Lynaugh, 838 F.2d 770, 772 (5th Cir. 1988); Jamerson v. Estelle, 666 F.2d

241, 245 (5th Cir. 1982).

On December 19, 1988, the judge who presided at the guilty plea hearing presided at a multiple bill hearing. Lee was represented by an attorney who had represented Lee's co-defendant at the prior hearing.

The court began by announcing that the state had filed a bill of information charging Lee with being a quadruple offender, which would expose him to a prison term of 20 years to life. As the court explained, however, the parties had made a plea bargain pursuant to which Lee would plead guilty to being a triple offender, which would expose him to a prison term of only nine years.

The court told Lee that the sentence would be nine years, then admonished him that he was giving up his rights to a hearing, witnesses, and to have the state prove the bill. Lee said that he understood. The court then proceeded to sentence Lee as a multiple offender to nine years with credit for time served. The court specified that the sentence would be without benefit of probation, parole, or suspension of sentence. As noted above, this last provision was deleted by the state Court of Appeal.

Lee does not contend that he made any factually erroneous admission: Indeed, he had two prior felony convictions. The multiple bill hearing was held only two months after the guilty plea hearing, and the court engaged in a limited colloquy with Lee. Nothing in the record indicates that Lee's admission was anything but voluntary.

AFFIRMED.