IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8009
Conference Calendar

HERBERT W. HECTOR,

Petitioner-Appellant,

versus

JAMES A. COLLINS, Director
of TDCJ,

Respondent-Appellee.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. W-91-CV-60
- - - - - - - - - - -
June 24, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Herbert W. Hector (Hector) appeals the district court's denial of his motion for relief under Fed. R. Civ. P. 60(b) from the district court's denial of habeas corpus relief.

We construe Hector's contention that the district court should have granted him relief because officials failed to deliver his copy of the district court's final judgment as a contention that the district court should have allowed him to bring an out-of-time appeal. Hector filed his motion for relief

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

after the expiration of the 180-day period during which he could have filed a timely motion for an out-of-time appeal. See Fed. R. App. P. 4(a)(6).

The reviewing court must limit its inquiry regarding the denial of a Rule 60(b) motion to whether the district court abused its discretion by denying the motion. Matter of Ta Chi Navigation Corp., 728 F.2d 699, 703 (5th Cir. 1984).

> [H]abeas corpus can be invoked with respect to the sufficiency of the indictment only when the indictment is so fatally defective that under no circumstances could a valid conviction result from facts provable under the indictment, and . . . such a determination "can be made only by looking to the law of the state where the indictment was issued."

Liner v. Phelps, 731 F.2d 1201, 1203 (5th Cir. 1984)(emphasis original)(quoting Johnson v. Estelle, 704 F.2d 232, 236 (5th Cir. 1983)). Texas courts have "long held that the allegation of attempt satisfies the need for a culpable mental state as to the attempted felony. Use of the word `attempt' rather than `intent' does not render an indictment fundamentally defective on the ground that it fails to allege specific intent." Ex parte Bartmess, 739 S.W.2d 51, 53 (Tex. Crim. App. 1987)(en banc)(internal citation omitted). Hector's indictment alleged that he "did . . . attempt to cause the death of an individual, namely: Brenda Smith[.]" Hector's indictment alleged intent sufficiently under Texas law.

"State courts are under no constitutional duty to establish a factual basis for the guilty plea prior to its acceptance, unless the judge has specific notice that such an inquiry is

needed." Smith v. McCotter, 786 F.2d 697, 702 (5th Cir. 1986). Hector's judicial confession did not provide notice that an inquiry about the factual basis for the plea was necessary. Moreover, "`[n]o federal constitutional issue is raised by the failure of the Texas state court to require evidence of guilt corroborating a voluntary plea.'" Smith, 786 F.2d at 702 (quoting Baker v. Estelle, 715 F.2d 1031, 1036 (5th Cir. 1983), cert. denied, 465 U.S. 1106 (1984)). Hector does not contend that his plea was involuntary.

A valid guilty plea waives any double jeopardy violation that is not apparent on the face of the indictment or record. Taylor v. Whitley, 933 F.2d 325, 329 (5th Cir. 1991), cert. denied, 112 S.Ct. 1678 (1992). Moreover, no violation of double jeopardy resulted simply because Hector murdered Rice and attempted to murder Smith in the same criminal episode. The Double Jeopardy Clause does not bar separate prosecutions for distinct criminal acts against different victims during the course of the same criminal episode. Miller v. Turner, 658 F.2d 348, 350-51 (5th Cir. 1981). Nor does Texas law bar such separate prosecutions. Jones v. State, 502 S.W.2d 164, 165 (Tex. Crim. App. 1973). Even if Hector had not waived his double jeopardy contention by pleading guilty (which he did), his claim is without merit.

AFFIRMED. See Fed. R. App. P. 34(a).