

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8080
Conference Calendar

UBALDO VILLAREAL,

Petitioner-Appellant,

versus

JAMES A. COLLINS,
Etc.,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-92-CA-255
- - - - -

August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges

PER CURIAM:*

Villareal pleaded guilty to aggravated sexual assault. Upon recommendation of the magistrate judge, the district court dismissed Villareal's petition for habeas corpus relief.

Villareal alleges that he never received the magistrate's report and recommendation. Even assuming that Villareal did not receive a copy of the document, the allegations that he raises in his opposition to the State's motion for summary judgment would not have changed the result of the district court's determination. See Fed. R. Civ. P. 61. Nor does Villareal raise

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

a factual challenge on appeal which would affect the scope of appellate review.

Several federal constitutional rights are waived when a defendant enters a valid guilty plea in a state criminal trial. Boykin v. Alabama, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). One is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment. Id.; see also Brown v. Butler, 811 F.2d 938, 940 (5th Cir. 1987)(guilty plea waives claims regarding Miranda violations). The protection against illegal searches and seizures is also a non-jurisdictional defect that is waived by the entry of a knowing and voluntary guilty plea.** See Norman v. McCotter, 765 F.2d 504, 511 (5th Cir. 1985).

The record from the state trial proceedings indicates that Villareal's plea was knowing and voluntary. The state court admonished Villareal as to the consequences and effect of his plea. The state court also determined that Villareal was mentally competent and that his plea was freely and voluntarily made.

Villareal argues that his guilty plea was not knowing and voluntary because he did not know when he pleaded guilty that his confession would likely be suppressed. He does not allege any other circumstances which rendered his plea invalid.

** Villareal's Fourth Amendment claim is also barred from collateral review because the state "provided an opportunity for full and fair litigation" of the claim in Villareal's application for state habeas relief. See Stone v. Powell, 428 U.S. 465, 493-95, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976).

A defendant's ignorance that a prior coerced confession could not be admitted in evidences does not compromise the voluntariness of the defendant's guilty plea. See Oregon v. Elstad, 470 U.S. 298, 317, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985). Further, a review of the state court record indicates that Villareal's claims are factually unsupported. In the statement he gave police, Villareal stated that he was read his rights before making the statement. A statement given by the officer conducting the investigation indicated that the victim identified Villareal out of a photographic lineup prior to his arrest. Thus, his arrest was supported by probable cause.

Villareal's assertion that his guilty plea was not voluntary because he did not know that his confession was inadmissible is without merit. The judgment of the district court dismissing Villareal's petition is AFFIRMED.