

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8245
Conference Calendar

JUAN MANUEL FUENTES, JR.,

Petitioner-Appellant,

versus

JAMES A. COLLINS, Director,

Respondent-Appellee.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. A-91-CV-31
- - - - -
(December 14, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Juan Manuel Fuentes, Jr., argues that the district court erred by failing to conduct an evidentiary hearing on his ineffective-assistance-of-counsel claim. "[T]he two-part Strickland v. Washington [466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)] test applies to challenges to guilty pleas based on ineffective assistance of counsel." Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). "To be

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

successful in a claim of ineffective assistance of counsel in regard to a guilty plea, a petitioner must show not only that his counsel's performance was deficient, but also that the deficient conduct prejudiced him." Young v. Lynaugh, 821 F.2d 1133, 1140 (5th Cir. 1987), cert. denied, 484 U.S. 986 (1987) and 484 U.S. 1071 (1988). The "prejudice" requirement "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. at 59.

Fuentes fails to explain how his counsel's failure to discover a matter already within Fuentes's personal knowledge could have affected his decision to plead guilty. Because Fuentes does not show that the outcome of his plea would have been different but for his counsel's alleged error, he fails to meet Strickland's "prejudice" requirement.

"[W]hether an evidentiary hearing is necessary to resolve charges of ineffective assistance of counsel depends on an assessment of the record." U.S. v. Smith, 915 F.2d 959, 964 (5th Cir. 1990). If the record is adequate to resolve the issue, a hearing is not necessary. Id. As evidenced by the preceding discussion, the record is adequate to resolve this issue. Fuentes, therefore, is not entitled to a federal evidentiary hearing on his ineffective-assistance claim.

Fuentes also complains that the district court erred because it failed to hold an evidentiary hearing after being made aware that he was jailed on the date of the alleged offense. 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 consequences." Boykin v. Alabama, 395 U.S. 238, 244, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). A defendant's solemn declarations in court carry a strong presumption of truth. Blackledge v. Allison, 431 U.S. 63, 74, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (1977).

The state record shows that prior to accepting Fuentes's guilty plea, the trial judge ascertained that Fuentes was mentally competent, that his plea was free and voluntary, and that he was aware of the consequences of his plea. Fuentes swore in an affidavit to the facts of the robbery. As with his ineffective-assistance claim, an evidentiary hearing is not necessary in a § 2254 petition if the state record before the court is adequate for the disposition of the case. Joseph v. Butler, 838 F.2d 786, 788 (5th Cir. 1988). The record is adequate. A hearing is not necessary.

Fuentes argues that his due process rights were violated because the prosecutor failed to sign a stipulation of evidence as required by Texas law. A valid unconditional guilty plea, however, waives all nonjurisdictional defects preceding the plea. U.S. v. Bell, 966 F.2d 914, 915 (5th Cir. 1992). Because Fuentes has not demonstrated that his plea is invalid, he has waived this issue.

The judgment is AFFIRMED.