

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-10701
Summary Calendar

HENRY ABBOTT CRIDER,

Petitioner-Appellant,

VERSUS

WAYNE SCOTT, Director,
Texas Department of Criminal Justice,
Institutional Division,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(4:94-CV-35-Y)

(February 7, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:¹

Appellant, a Texas state prisoner, brought this action under 28 U.S.C. § 2254 challenging a 1976 felony conviction which was used to enhance three sentences which he is currently serving. His sentence for the 1976 conviction has expired. The state moved to dismiss, or in the alternative, for summary judgment, contending that the petition should be dismissed under Rule 9(a) of the rules governing § 2254 habeas cases because the eighteen years which

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

elapsed between Appellant's conviction and the filing of his federal habeas action was unreasonable and prejudiced the state's ability to counter. The district court agreed and dismissed. We affirm, but on different grounds.

Appellant was convicted in 1976 for murder while driving while intoxicated. That conviction was used to enhance subsequent sentences on three separate offenses of driving while intoxicated. As noted, the sentence for the 1976 conviction has expired. In connection with the sentences Appellant is now serving, he pleaded "true" to the enhancement charges. A habeas petitioner who pleads "true" to enhancement charges and is not currently serving the sentence imposed under the prior conviction has "'waived any complaints he may have had concerning the former offenses which were set out in the enhancement charge.'" Long v. McCotter, 792 F.2d 1338, 1340, 1342 (5th Cir. 1986). Appellant pleaded "true" to the enhancement paragraph which used his 1976 conviction to enhance the sentences he is currently serving. As a result, his challenge that his 1976 conviction was invalid is barred. See id., at 1342-44.

As a result of this ruling, we need not consider Appellant's argument that the application of Rule 9(a) is an ex post facto violation. Additionally, Appellant's motions to file a supplemental brief are denied as moot.

AFFIRMED. Motions DENIED.

