

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

---

No. 94-20847  
Summary Calendar

---

HOWARD VANZANDT WILLIAMS,

Petitioner-Appellant,

VERSUS

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

Respondent-Appellee.

---

Appeal from the United States District Court  
For the Southern District of Texas

(CA H 91 1477)

---

( June 30, 1995 )

---

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:\*

BACKGROUND

Howard Vanzandt Williams, a prisoner of the state of Texas,  
filed a federal habeas corpus petition challenging his guilty-plea

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conviction for delivery of a controlled substance, namely cocaine.<sup>1</sup> Williams alleged that the offense was "manufactured" by Houston police officers Katz and Swain to retaliate against him for giving information to Internal Affairs. Williams asserted that his plea of guilty to the charge was not knowing and voluntary because it was the result of threats, intimidation, and harassment leveled against his family by Katz and Swain. Further, he asserted that he was not informed that the police officers, who would have acted as witnesses against him had he proceeded to trial, were under investigation for perjury and filing false offense reports.

In its answer, the state argued that Williams had exhausted his state remedies, and it moved for summary judgment. Williams filed a reply to the state's summary judgment motion, arguing, inter alia, that the state had misconstrued his claims and that an evidentiary hearing was necessary to resolve disputed facts concerning the officers' misconduct and its effect on the voluntariness of his guilty plea.

The district court declined to hold an evidentiary hearing and relied on the factual determinations of the state court. The district court granted the respondent's motion for summary judgment and denied habeas corpus relief. The district court granted leave to proceed on appeal in forma pauperis but declined to issue a certificate of probable cause.

---

<sup>1</sup> Williams was sentenced to five years in prison in 1987. He filed his federal habeas petition in May 1991; therefore, it appears, and the state does not assert otherwise, that Williams was in custody for purposes of 28 U.S.C. § 2254. See Maleng v. Cook, 490 U.S. 488, 490-91 (1989).

This court construed the notice of appeal as a request for CPC and granted CPC. The respondent was directed to brief the issues 1) whether the state court's findings of material facts concerning Williams' claim that he was coerced into pleading guilty as a result of harassment and threats by the police were sufficiently developed to merit a presumption of correctness and 2) whether the district court should have held an evidentiary hearing.

#### OPINION

Williams contends that the facts material to his claim, that he was coerced into pleading guilty as a result of threats and harassment by the police, were not sufficiently developed in a paper hearing as to merit a presumption of correctness. He argues that Officer W. V. Hill's affidavit addresses only the alleged facts and circumstances of the crime and rather than the claim raised in his petition that his plea was involuntary.

"Under 28 U.S.C. § 2254(d)(2), a presumption of correctness will not apply to a state court finding of fact if the factfinding procedure employed by the state court was not adequate to afford a full and fair hearing." Armstead v. Scott, 37 F.3d 202, 207 (5th Cir. 1994), cert. denied, 115 S. Ct. 1709 (1995). "[F]actual determinations made solely from a paper record are not necessarily adequate to satisfy § 2254(d)(2), and they should not always be accorded the presumption of correctness." Ellis v. Collins, 956 F.2d 76, 79 (5th Cir.), cert. denied, 503 U.S. 915 (1992). However, if the same state judge presides over the guilty plea and

the state application for writ of habeas corpus, "the state fact-finding procedures are entitled to a presumption of correctness even without a state evidentiary hearing." Id. (internal quotation and citation omitted); Armstead, 37 F.3d at 208.

Williams raised the question whether his guilty plea was knowing and voluntary in his state application. There was no evidentiary hearing, and the state court record did not include a transcript of the plea hearing. However, the state court record reflects that Williams, represented by counsel, was admonished concerning the consequences of his plea and that he persisted in entering the guilty plea. It appeared to the state court that Williams was competent and that the plea was entered freely and voluntarily. Williams' plea was received and entered into the record.

In response to Williams' state habeas corpus petition, the respondent presented the affidavit of Officer W. V. Hill attesting that Williams sold cocaine to him and Officer Hernandez. Hill's affidavit does not address the voluntariness of Williams' guilty plea. The affidavit states that Hill and Hernandez were working as undercover officers when they were flagged down by Williams. After some discussion concerning what was understood to be the sale of cocaine, Williams went to a house and returned with a baggie of white powder, which Williams sold to the officers for \$50. The affidavit also states that Officer Hill had not been charged with any wrongdoing.

The trial judge found "that there [were] no controverted, previously unresolved facts material to the legality of the Applicant's confinement which require[d] an evidentiary hearing." Although it was not explicitly stated, the trial court implicitly determined that the facts supported the conclusion that Williams' plea was entered knowingly and voluntarily. See Lavernia v. Lynaugh, 845 F.2d 493, 500 (5th Cir. 1988) (implicit factual determinations are entitled to a presumption of correctness).

State Judge Doug Shaver presided over both the guilty plea hearing and the state application for writ of habeas corpus. Because Judge Shaver had an opportunity to observe Williams during the plea process and to determine his credibility, a paper hearing was adequate to make factual determinations regarding Williams' allegations in his habeas corpus application. See Armstead, 37 F.3d at 208. Judge Shaver could compare his firsthand knowledge of what had transpired at the guilty plea hearing to the allegations in Williams' habeas corpus application and the information in Hill's affidavit. See Ellis, 956 F.2d at 79. Thus, the state court's implicit factual findings concerning the circumstances and Williams' understanding of his guilty plea are entitled to a presumption of correctness. See Lavernia, 845 F.2d at 500.

Williams contends that the district court should have conducted an evidentiary hearing to develop the facts underlying his claim that his guilty plea was not knowing and voluntary because it was coerced. "A federal habeas court must hold an evidentiary hearing if there are disputed facts and the petitioner

did not receive a full and fair hearing in a state court, either at trial or in a collateral proceeding." Wiley v. Puckett, 969 F.2d 86, 98 (5th Cir. 1992). A hearing is not necessary if the record is adequate to dispose of the claim. Id.

The habeas corpus petitioner must allege facts that would entitle him to relief. See Lavernia, 845 F.2d at 501. "If a defendant understands the charges against him, understands the consequences of a guilty plea, and voluntarily chooses to plead guilty, without being coerced to do so, the guilty plea and any concomitant agreement will be upheld on federal review." DeVille v. Whitley, 21 F.3d 654, 657 (5th Cir.) (internal quotation and citations omitted), cert. denied, 115 S. Ct. 436 (1994).

Williams' unsupported, conclusional allegations of coercion are inadequate to overcome the presumption that the state court was correct in determining that there were no unresolved facts material to the question of the legality of his confinement. In his brief, Williams argues that a hearing should be held to question the prosecutor, defense counsel and all witnesses who have information with respect to his guilty plea. Williams does not specifically state what additional information the witnesses could provide. "The court need not blindly accept speculative and inconcrete claims as the basis upon which to order a hearing." Lavernia, 845 F.2d at 501 (internal quotation and footnote citation omitted).

Moreover, the record is adequate to dispose of the claim. The respondent filed a motion for summary judgment relying on the state court's findings of fact, and Williams failed to respond with

evidence to overcome the presumption. Officer Hill's affidavit supports an inference that Williams pleaded guilty because he was guilty. Further, the district court emphasized that the state was not aware of the investigation of the Houston police officers until nine months after Williams pleaded guilty. The district court did not err in refusing to grant Williams a federal evidentiary hearing.

Accordingly, the judgment of the district court denying habeas corpus relief is AFFIRMED.