UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-40321

VERNON E. FAULKNER,

Petitioner-Appellant,

VERSUS

WARDEN WINN CORRECTIONAL CENTER,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(93-CV-1297)

(April 7, 1995)

Before WISDOM, DUHÉ and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Appellant Vernon Faulkner (Appellant) appeals from the district court's denial of his application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. We affirm.

I. FACTS

Appellant plead guilty to an amended bill of information charging him with manslaughter and simple robbery, and was thereafter sentenced to twenty-one years for manslaughter and seven years for robbery, to run consecutively. Appellant sought writ of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

habeas corpus in the district court, alleging seven grounds for relief. The district court denied the petition without an evidentiary hearing, and denied Appellant's request for a certificate of probable cause. We granted Appellant's request for a certificate of probable cause, and requested that the parties brief whether the district court erred by not conducting an evidentiary hearing to establish the facts surrounding Faulkner's claim that his guilty plea to manslaughter was invalid because he was not informed of the essential elements of the offense.[2]

II. ANALYSIS

> We have consistently held that a guilty plea "must not only be entered voluntarily, but also knowingly and intelligently: the defendant must be aware of the relevant circumstances and the likely consequences. On federal habeas review, a guilty plea which was voluntarily entered by a defendant who understood the nature of the charges and consequences of the plea will pass constitutional muster. The plea will be upheld even if the state trial judge fails to explain the elements of the offense, provided it is shown by the record...that the defendant understood the charge and its consequences.

Hobbs v. Blackburn, 752 F.2d 1079, 1081 (5th Cir. 1985)(citation omitted), cert. denied, 474 U.S. 838, 106 S.Ct. 117 (1985). Appellant does not dispute that his plea was voluntary, but contends that the state court failed to properly inform him of the intent element of manslaughter. We begin by setting out the appropriate portions of Appellant's plea hearing.

Q. Who made that decision?

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[2] Despite our invitation to brief any other appropriate issue, Appellant only discusses the validity of his guilty plea on appeal, and thereby waives his remaining issues.

A. I did.

Q. Do you think it's in your best interest to do this?

A. Yes, sir.

Q. Are you pleading guilty because you're in fact guilty?

A. Yes, sir.

Q. Okay, between July 17, and July 18, 1987, did you willfully and unlawfully kill Readus W., nickname Ward, Williams?

A. Yes, sir.

Q. Tell me in your own words how that happened?

A. Well, we got into a fight and beat his head up against the headboard on his bed. We were sharing a room.

Q. Did you have any provocation or justification, were you defending yourself, or had he threatened you with killing you or anything?

A. No, sir, we was in an argument and he hit me first and we just - it was just a fight.

Q. On the same days did you willfully and unlawfully commit simple robbery by use on - against Readus W. Ward Williams by use of force or intimidation and take something of value from him?

A. I don't know if it was by force. I was - I took some change and stuff that was on the dresser, some money and stuff.

Q. Was that after you had beat his head against the wall?

A. Yes, sir.

Q. He was either unconscious or dead at that point?

A. Yes, sir.

In the information to which he plead, Appellant was charged with violating La. Rev. Stat. Ann. § 14:31, manslaughter, and simple robbery. Under § 14:31, manslaughter can occur in one three

ways: 1) a defendant commits a first or second degree murder, as defined in § 14:30 and 14:30.1, but the offense is mitigated because of "sudden passion" or "heat of blood"; 2) a homicide is committed during the commission of certain other crimes; 3) a homicide is committed while resisting arrest. The second and third subsections do not require a showing of intent. However, the first subsection requires the same showing as first or second degree murder, namely, the state must show that the homicide was committed with intent to kill or commit great bodily harm.

Appellant contends that although the information does not specify the appropriate subsection of § 14.31, he could not have been charged under subsection 2) because simple robbery is specifically excluded from the list of predicate crimes.[3] He asserts, therefore, that he was charged under subsection 1), and that there was no evidence of intent to kill. Assuming, ad arguendo, that Appellant was charged under subsection 1), the record of Appellant's plea hearing nonetheless makes plain that Appellant knew of the nature of the charges brought against him, and understood the consequences of his plea.

Appellant admitted that, during their fight, he "beat" the

[3] Simple robbery is, however, a predicate crime in the second degree murder statute, La. Rev. Stat. Ann. § 14:30.1, under which he was originally charged. The plea to manslaughter plainly represented a compromise that saved the state the expense of trial while saving Appellant possible exposure to life in prison. Appellant's argument that he could not have been convicted of manslaughter through use of the simple robbery charge belies the fact that--but for the guilty plea--he could have been convicted of second degree murder, with a concomitant life sentence, based on the same charge.

decedent's head against the headboard, and the district court was plainly entitled to view this admission as manifesting intent to inflict great bodily harm.[4] The plea colloquy further makes clear that Appellant was aware of the charges to which he was pleading guilty, knew of the maximum sentences he could receive and entered the plea voluntarily. Although the state court did not specifically recite the exact elements of the crimes charged, we find that Appellant's factual recitation satisfied the elements of the crimes and further find that knew and understood the nature and the elements of the charges brought against him. Because the record is sufficient to address Appellant's contentions, the district court did not err by denying Appellant's request for an evidentiary hearing. See e.g. Byrne v. Butler, 845 F.2d 501, 512 (5th Cir. 1988), cert. denied, 487 U.S. 1242, 108 S.Ct. 2918 (1988).

III. CONCLUSION

It is plain that Appellant understood the charges against him, understood the consequences of the guilty plea, and voluntarily chose to plead guilty. The record demonstrates that the Appellant's plea was knowing and voluntary. The district court properly denied Appellant's request for an evidentiary hearing. The judgment of the district court is AFFIRMED.

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[4] Appellant also seems to argue that his factual recitation did not admit the crime of simple robbery because he did not use force to secure the articles taken. Appellant ignores the fact that but for his beating of the decedent, he would not have been able to abscond with decedent's property.