UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-60685

DWIGHT L. LOTT,

Petitioner-Appellant,

VERSUS

EDWARD HARGETT,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(92-CV-200)

(July 17, 1995)

Before WISDOM, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Appellant Dwight L. Lott (Appellant) appeals the district court's denial of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, we affirm.

I. BACKGROUND

A. Procedural History

In 1988, Appellant plead guilty to murder in violation of Mississippi Code Ann. § 97-3-19(1)(a).[2] In response to his guilty

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[2] Miss. Code Ann. § 97-3-19(1)(a) provides, in relevant part,

(1) The killing of a human being without the authority

plea, the indictment was amended from a charge of murder as a habitual offender--which would have resulted in a sentence of life without possibility of parole--to simple murder. Appellant's petition to vacate his judgment and conviction was denied by the circuit court of Pearl River County, and the Mississippi Supreme Court affirmed.[3]

Appellant asserted four grounds for relief in his original § 2254 petition: (a) that his guilty plea was not supported by a factual basis of guilt because the record reflects "at best" a self-defense plea; (b) that the state failed to establish there was a murder or that Lott intended to kill the victim; (c) that the state failed to show the essential elements of murder; and (d) that the state failed to establish a record that a crime occurred and therefore did not meet the prerequisites for proving the murder charge. On appeal, Appellant's contentions have been compressed into a single issue: Whether there was a factual basis to establish a charge of murder and whether Lott voluntarily, knowingly and intelligently entered a plea of guilty to that murder.

B. Factual History

We recite the facts as declared by the Mississippi Supreme

> of law by any means or in any manner shall be murder in the following cases:
>
> > (a) When done with deliberate design to effect the death of the person killed, or of any human being....

[3] Lott v. State, 597 So.2d 627 (Miss. 1992).

Court:

> On November 1, 1987, Lott and Wendell Champagne, Jr., began arguing while drinking at Champagne's house. Champagne grabbed a gun and the two fought over it. In the ensuing altercation, Lott ended up with the weapon and threw Champagne down a flight of stairs. Lott, brandishing a loaded gun, followed him to the bottom of the steps where they continued their brawl.
>
> Lott repelled Champagne by hitting him with the butt of the gun. After hitting Champagne twice [in the head, with the rifle], he laid the gun aside. Champagne continued to pull himself up and fight. Each time Lott knocked him down again.
>
> Champagne started across the parking lot to his truck. Lott, who thought that Champagne had a gun in his truck, positioned himself between Champagne and the truck. The two continued to fight. Eventually, Champagne was rendered semi-conscious. Lott then "passed out or went to sleep." He awakened an hour or two later and left without rendering any assistance, even though Champagne was moaning and Lott knew that he was "severely injured."

II. ANALYSIS

Our standard on review is well established,

> 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).[4]

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[4] See also Henderson v. Morgan, 426 U.S. 637, 645 n. 13, 96 S.Ct. 2253, 2257 (1976).

> A plea may be involuntary either because the accused does not understand the nature of the constitutional

Although Mississippi law requires the trial court to establish an adequate factual basis for the guilty plea, unless the court's failure to establish a factual basis results in constitutional error, Appellant is not entitled to § 2254 relief.[5]

> As we have previously noted, a failure to comply with state law requirements presents a federal habeas issue only if it involves federal constitutional issues. State courts are under no constitutional duty to establish a factual basis for the guilty plea prior to its acceptance, unless the judge has specific notice that such an inquiry is needed. We have explicitly stated: No federal constitutional issue is raised by the failure of the Texas state court to require evidence of guilt corroborating a voluntary plea. The Jackson v. Virginia, mandate that sufficient evidence exist from which a rational fact finder could find guilt beyond a reasonable doubt is inapplicable to convictions based on a guilty plea.

Smith v. McCotter, 786 F.2d 697, 702 (5th Cir. 1986)(citations omitted) (emphasis supplied). As an initial matter, we find that the state court had no federal constitutional duty to take a factual recitation satisfying each element of the murder charge,

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> protections that he is waiving, or because he has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt. Without adequate notice of the nature of the charge against him, or proof that he in fact understood the charge, the plea cannot be voluntary in the latter sense.

(citations omitted).

[5] The cases Appellant cites for the proposition that "[federal] [c]ourts are constantly admonished not to enter judgment on pleas of guilty unless satisfied that there exists a factual basis for the plea" are inapposite because they address the requirements of Fed. R. Crim. P. 11(f), not constitutional requirements. See McCarthy v. United States, 394 U.S. 459, 464, 89 S.Ct. 1166, 1170 (1969); United States v. Briggs, 920 F.2d 287, 293 (5th Cir. 1991), op. withdrawn, substituted op., remanded on reh'g, 939 F.2d 222 (5th Cir. 1991); United States v. Oberski, 734 F.2d 1030, 1031 (5th Cir. 1984).

any failure to do so is of no moment to our analysis.[6]

It is plain that Appellant's guilty plea passed constitutional muster. There is no doubt that Appellant was informed of and understood the potential consequences of his plea, because the state court informed him on several occasions not only of the maximum sentence, but of the court's intention to give him the maximum sentence.[7]

It is also plain--despite his post hoc assertions to the contrary--that Appellant understood all of the elements of the murder charge against him. Appellant never asserted his innocence of the crime charged, and, in fact, both he and his attorneys went

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[6] See Hobbs v. Blackburn, 752 F.2d at 1082 ("There was nothing in Hobbs' conduct or in anything he said or did in open court which would have alerted the trial judge that the need existed for a factual basis inquiry.").

[7] For example, at one point the court stated,

> Q. Now, this, you understand, is unlike most cases where the sentence is a lot in the discretion of the trial judge and where there is plea bargaining. And since this District doesn't use plea bargaining, we have to sit down and carefully go over a presentence investigation report and then arrive at what we feel to be a fair and just sentence. Do you understand if you decide to plead guilty to murder and if Mr. McDonald does make his motion to delete from the indictment the habitual offender part or portion, that your sentence is going to be life imprisonment in the custody of the Mississippi State Department of Corrections. That sentence is going to commence after you have completely served any and all sentences you are now facing. Do you understand we don't have but one option: that is life imprisonment. And the only other option we have is whether it runs concurrent or consecutive. And since this is a reduction on a habitual offender, I don't have any intention of running it consecutive--I mean concurrently. Do you understand that?
>
> A. Yes, sir.

to great lengths to ensure that the court would accept the plea.

Despite his unequivocal admission of guilt, the court took great care to ensure that Appellant understood the charges. First, the court read to Appellant the indictment, which set forth each element of the offense.[8] Second, Appellant signed a written statement attesting that his attorneys "counseled and advised [him] on the nature of each charge."[9] Third, the judge engaged in an extensive plea colloquy with the Appellant to ensure that Appellant understood his plea. In relevant part, the following exchange occurred,

> Q. Now, Dwight, on the first day of November, 1987, are you telling me under oath that you did commit the crime of Murder, and that is, you did with malice aforethought, feloniously, and without authority of law kill and murder one Wendell Champagne, Sr., here in Pearl River County, Mississippi?
>
> A. Yes, sir.
>
> M M M M
>
> Q. Now, Dwight, do you understand what "feloniously" and "willfully" and "with malice aforethought" mean? Do you understand that legalistic language?
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> A. I think I do.

Given the written and oral attestations that Appellant knew and understood the charges against him, coupled with his

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[8] The indictment stated in relevant part,

> Dwight L. Lott, Jr. did wilfully, unlawfully, feloniously without authority of law and his malice aforethought, kill and murder one Wendell Champagne, Sr., a human being....

[9] Appellant testified during the plea colloquy that he had over a year of college education, and that he had no trouble reading or writing.

unequivocal and vigorous assertion of guilt, the court had no duty to further pursue the matter. As stated above, it was not constitutionally required that the court recite each element of the charge against him. However, the fact that the court undertook to explain the elements of the charges is merely additional indicia that the plea was informed.

We also note that the state court went to great lengths to insure that Appellant, in fact, could not assert a valid "self-defense" defense.[10] Appellant now contends that the state court should not have accepted his plea in view of his potential defense.

At the plea hearing, Appellant was informed numerous times that he had the right to plead "not guilty," go to trial and assert his defense. In fact, at one point the court offered Appellant the opportunity to withdraw his guilty plea. Entering a plea, despite knowledge of a potential defense, does not negate the voluntariness of the plea.[11]

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[10] At several points in the plea colloquy, Appellant admitted that his actions went beyond what was required to protect himself. The record adequately supports the state court's conclusion that Appellant did not act in self-defense, and are therefore entitled to a presumption of correctness. See 28 U.S.C. § 2254.

[11] See e.g. North Carolina v. Alford, 91 S.Ct. 160, 164 (1970)

> The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. That he would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant's advantage.

(citation omitted).

III. CONCLUSION

Appellant made a knowing, intelligent, informed and voluntary decision to plead guilty, and now must live with the consequences of his bargain. The judgment of the district court is AFFIRMED.