

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60840
Summary Calendar

TALMADGE EUGENE INGRAM,

Petitioner-Appellant,

versus

EDWARD HARGETT, Superintendent,
Mississippi State Penitentiary,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
(2:90-CV-82-S-0)

(July 25, 1995)

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:¹

Talmadge Eugene Ingram appeals the denial of habeas relief.

We **AFFIRM**.

I.

In September 1983, Ingram pleaded guilty in Mississippi state court to charges of conspiracy to commit capital murder and aggravated assault on a police officer. He was sentenced to a 20-year term for conspiracy and a consecutive 30-year term for

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

aggravated assault. The conspiracy sentence was imposed without benefit of probation or parole, pursuant to the Mississippi habitual offender statute. Ingram was not entitled to a direct appeal, and he did not pursue state post-conviction relief.² MISS. CODE ANN. § 99-35-101 (1994).

In his federal habeas petition, filed in April 1990, Ingram claimed, *inter alia*, that his recidivist sentence violated principles of due process; and that counsel rendered ineffective assistance by stipulating to his prior convictions.³ Over Ingram's objections, the district court adopted the magistrate judge's recommendation, and dismissed the petition, on the ground that

² According to the respondent, Ingram filed a petition for post-conviction relief in the trial court but did not appeal that court's denial of relief to the Mississippi Supreme Court. The record, however, contains nothing to support that assertion. In any event, a remand with directions to dismiss the petition for failure to exhaust state remedies would be futile, because Ingram's claims are time-barred under the Mississippi Uniform Post-Conviction Collateral Relief Act (PCCRA), MISS. CODE ANN. § 99-39-5(2) (1994). See **Smith v. Estelle**, 562 F.2d 1006, 1007-08 (5th Cir. 1977) (absence of available state remedy excuses the need for exhaustion). The PCCRA became effective April 17, 1984. See MISS. CODE ANN. § 99-39-1, *et seq.* (1994). It provides that a prisoner must seek post-conviction relief within three years of his conviction. *Id.* § 99-39-5(2). Because Ingram was convicted before the effective date of PCCRA, he was required to file a petition for post-conviction relief by April 17, 1987. **Patterson v. State**, 594 So.2d 606, 607 (Miss. 1992); see MISS. CODE ANN. § 99-39-5(2).

³ Ingram alleged further that his convictions violated principles of double jeopardy, and that his guilty pleas were involuntary because counsel erroneously advised him to plead to both offenses in violation of principles of double jeopardy. The district court dismissed those claims prior to ordering service of the complaint. Ingram has not appealed the dismissal of those claims, and has, therefore, abandoned them. See, e.g., **Cooper v. Sheriff, Lubbock County, Tex.**, 929 F.2d 1078, 1081 n.1 (5th Cir. 1991).

Ingram's claims were procedurally barred from federal review because they were never submitted to a state court, and are now time-barred under the Mississippi Uniform Post-Conviction Collateral Relief Act, MISS. CODE ANN. § 99-39-5(2) (1994), discussed in note 2, *supra*. The district court granted a certificate of probable cause to appeal.

II.

Ingram contends that the limitations provision in § 99-39-5(2) cannot bar federal habeas review of his claims because it is not applied strictly and regularly in all post-conviction proceedings in which a prisoner challenges the legality of his sentence. See ***Glover v. Hargett***, ___ F.3d ___, ___, 1995 WL 355236, at *1 (5th Cir. 1995) (brackets, internal quotation marks, and citation omitted) ("a state procedural ground is not adequate unless the procedural rule is strictly or regularly followed"). We need not reach this issue because, even assuming that the procedural bar should not have been applied, Ingram's claims fail on the merits. See *id.*

Ingram challenges the voluntariness of his plea to the enhancement charges, and contends that counsel was ineffective for failing to investigate the validity of his prior convictions. He does not assert that the prior convictions are invalid, but he maintains that his recidivist sentence violates principles of due process because the trial court did not advise him of the effect of a sentence as a habitual offender, question him concerning his prior convictions, or require him to enter a plea to the recidivist

charges.

Contrary to Ingram's assertion, the trial court informed him of the sentencing consequences if he pleaded guilty as a habitual criminal. Furthermore, Ingram's attorney told the trial court that he and Ingram had discussed the "elements of the charges" and the "proof necessary for conviction". Ingram informed the court that his plea was voluntary, and that he was satisfied with the services of his attorney. He was present when his attorney waived proof of his prior convictions, and he was provided an opportunity for allocution prior to being sentenced as a habitual offender.

Ingram's claims of due process violations and ineffective assistance of counsel at the recidivist proceedings fail to support a claim of federal constitutional error. A "mere allegation[]" that a guilty plea to a multiple offender charge was involuntary due to counsel's ineffectiveness fails to establish constitutional error if the petitioner does not challenge the validity of the prior convictions or the fact that he was the person convicted. *Joseph v. Butler*, 838 F.2d 786, 791 (5th Cir. 1988); see also *Long v. McCotter*, 792 F.2d 1338, 1343-46 (5th Cir. 1986) (rejecting collateral challenge to enhancement charges after defendant entered "true" plea). Therefore, even assuming the district court erred in applying the procedural bar, Ingram is not entitled to federal habeas relief.

III.

For the foregoing reasons, the judgment is

AFFIRMED.