

Unpublished Disposition

202 F.3d 274

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA7 Rule 53 for rules regarding the citation of unpublished opinions.)
United States Court of Appeals, Seventh Circuit.

Calvin OLLINS, Petitioner-Appellant,

v.

Keith COOPER, Respondent-Appellee.

No. 98-4157. Submitted Dec. 16, 1999*.

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See [Fed. R.App. P. 34\(a\)](#).

Decided Jan. 3, 2000.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 95 C 5699. [John A. Nordberg](#), Judge.

Before Hon. [FRANK H. EASTERBROOK](#), Hon. [ILANA DIAMOND ROVNER](#), Hon. [DIANE P. WOOD](#), Circuit Judges.

Opinion

ORDER

*1 Calvin Ollins appeals the denial of his petition for a writ of habeas corpus pursuant to [28 U.S.C. § 2254](#), in which he challenges his convictions for the kidnapping, sexual assault, and murder of Lori Roscetti, a student at Rush Medical College. In his petition, Ollins contends that the juvenile court judge improperly transferred him from juvenile to criminal court and that the trial court erred by denying his motion to quash his warrantless arrest and admitting statements he made during his arrest and interrogation. We affirm.

On October 18, 1986 police discovered Roscetti's severely beaten body lying next to her beige Subaru in a railroad lot. The keys to the Subaru were not in the car. After a three-month investigation, the police questioned a suspect who implicated fourteen-year-old Ollins. Just hours later, in the early morning of January 28, 1987, the police went without a warrant to arrest Ollins at his home. Although Ollins' mother was not present when the police arrived at the apartment, a friend of the family was staying at the residence to watch Ollins in her stead. The family friend allowed the police to enter and signed a consent to search. The police awakened and arrested Ollins, who during a search of his belongings stated that "he didn't have any keys." The police left a business card with the family friend and brought Ollins to a station for questioning. At the station, Chicago police officers and an assistant state's attorney interviewed Ollins for several hours, administering the *Miranda* warnings during the interview. Eventually, Ollins confessed to the police.

The state moved for Ollins to be tried as an adult and requested a transfer hearing under section 5-4(3) of the Illinois Juvenile Court Act of 1987. The juvenile court conducted a hearing and subsequently granted the state's motion. After the case was transferred to criminal court, Ollins moved to quash his arrest, to suppress the evidence and statements obtained during the arrest, and to suppress the confession made later during his interview at the police station. The trial court denied the motions, and a jury found Ollins guilty on all counts. He was sentenced to life without parole for the murder, and concurrent terms of thirty years for the sexual assault and fifteen years for the kidnapping.

On direct appeal Ollins challenged the transfer to criminal court and the denials of his motions to quash and suppress. The Illinois Appellate Court affirmed, and the Illinois Supreme Court denied Ollins' petition for leave to appeal. Ollins did not petition for state post-conviction relief before the limitations period ran, and thus his state court remedies have been exhausted. See *Harris v. DeRobertis*, 932 F.2d 619, 624 (7th Cir.1991). Because Ollins commenced this action in the district court before the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), we employ the pre-AEDPA version of 28 U.S.C. § 2254 to Ollins' petition. See *Lindh v. Murphy*, 521 U.S. 320 (1997).

*2 On appeal, Ollins argues that the state trial court denied him his rights to due process and equal protection by misinterpreting the criteria that a court must examine before transferring a youth from juvenile court to criminal court. See 705 ILCS 405/5-805(3). Regarding the contention of an improper transfer, we agree with the district court that Ollins raised only a state-law claim, and "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991); see also *Reed v. Clark*, 984 F.2d 209, 210 (7th Cir.1993), *aff'd sub nom. Reed v. Farley*, 512 U.S. 339 (1994). Ollins' attempts to recharacterize this state-law argument as a constitutional claim could not save his petition because only claims that were "fairly presented" to the state courts for decision can be advanced before a federal court. See *Moffat v. Gilmore*, 113 F.3d 698, 702 (7th Cir.1997); *Moleterno v. Nelson*, 114 F.3d 629, 635 (7th Cir.1997). Ollins neglected to raise this issue as a federal constitutional argument in the state court proceedings. With respect to Ollins' claim that the state court proceedings were unconstitutionally biased because Ollins is AfricanAmerican and the victim of the crime was Caucasian, Ollins likewise failed to present this argument before a state court and therefore waived federal review of the issue. See *Moffat*, 113 F.3d at 702.

We also agree with the district court that federal review of his Fourth Amendment claim is precluded. As the Supreme Court held in *Stone v. Powell*, 428 U.S. 465, 494 (1976), "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." See also *Holman v. Page*, 95 F.3d 481, 489 (7th Cir.1996). Ollins does not contend that he was deprived of a chance to litigate his Fourth Amendment claims fully and fairly in the state courts. Nor could he, because the decision of the Illinois Appellate Court demonstrates that Ollins presented his Fourth Amendment claims and that the state courts "carefully and thoroughly" reviewed and determined the applicable law and facts. See *Pierson v. O'Leary*, 959 F.2d 1385 (7th Cir.1992).

Finally, Ollins contends in his petition that his confession to the police was involuntary because neither his parents nor counsel were present during the interrogation. He expands this argument on appeal, arguing that his statement was involuntary because he is mentally handicapped and was not capable of understanding the *Miranda* warnings. The district court misunderstood this argument to be part of Ollins' Fourth Amendment claim, and thus erred in finding that *Stone v. Powell* precluded federal review of the issue. Nevertheless, we conclude that Ollins failed to show that the state trial court made a constitutional error by denying his motion to suppress the statement. Whether a statement was made involuntarily under the totality of the circumstances is an issue of law subject to de novo review. See *Everett v. Barnett*, 162 F.3d 498, 500 (7th Cir.1998) (collecting cases). A state court's determination of the historical facts regarding voluntariness, however, is presumed correct. *Id.* Although a juvenile's low intellectual capabilities and the absence of parents are important factors in assessing whether a juvenile's confession was voluntary, under federal law neither circumstance presumptively bars the admissibility of a statement. See *United States v. Wilderness*, 160 F.3d 1173, 1175 (7th Cir.1998). Here, the trial court accepted testimony that the police and the assistant state's attorney read Ollins his rights five times, that the assistant state's attorney repeatedly asked if he understood his rights, and that Ollins replied that he understood what was being read to him. Furthermore, the court agreed with the testimony of the juvenile court's director of clinical services that, despite Ollins' documented low IQ, he would have been able to understand the words and phrases used by the police to convey the *Miranda* warnings. Ollins has not presented any reason to disrupt the presumption that the state trial court's historical findings on the voluntariness of his statement are correct. Given these findings we have no basis in law to conclude that Ollins' confession was involuntary.

*3 For the foregoing reasons, we AFFIRM the district court's denial of Ollins' petition for habeas corpus.

Parallel Citations

2000 WL 6202 (C.A.7 (Ill.))

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