IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARRIS JERMAINE WILSON,	)	
	)	
Petitioner,	)	
	)	1:05CV270
v.	)	
	)	
NORA HUNT, Superintendent,	)	
	)	
Respondent.	)	

RECOMMENDATION AND ORDER OF UNITED STATES MAGISTRATE JUDGE

This matter is before the court on Respondent's motion for summary judgment (docket no. 6). Petitioner has responded in opposition to the motion, and in this posture, the matter is ripe for disposition. For the reasons which follow, it will be recommended that the motion be granted.

BACKGROUND

Petitioner is a state court prisoner who is serving consecutive prison terms of 70-84 months each on his guilty pleas in the Scotland County Superior Court to trafficking in cocaine by possession and trafficking in cocaine by transportation. Petitioner also pled guilty to a felon-in-possession charge, which was combined for sentencing purposes with the trafficking by transportation charge. Petitioner pled guilty according to the terms of a plea bargain which provided that charges of trafficking in quantities of cocaine covering 400 grams or more would be reduced to trafficking in quantities of 200-399 grams of cocaine. *Compare* N.C. GEN. STAT. §

90-95 (h)(3)(b) (providing for punishment as a Class F felon with a sentence of 70-84 months for 200-399 grams) *with* § 90-95 (h)(3)(c) (providing for punishment as a Class D felon with a sentence of 175-219 months for 400 grams or more). Petitioner's plea bargain also provided that "all other cases dismissed." Petitioner did not appeal, but he filed two Motions For Appropriate Relief (MAR) in the state court, both of which were denied.[1] Petitioner's petition for a writ of certiorari in the North Carolina Court of Appeals to review the superior court's denial of his second MAR was denied.

Petitioner's has alleged two grounds for relief in this court. First, he claims that his suppression motion was granted by the trial court but the charges that derived from the unlawful search and seizure were not dismissed, and because the trial court entered a verbal ruling there is no record of the suppression hearing result; and as a result, the trial court accepted Petitioner's guilty plea using the same evidence that was suppressed as a factual basis for the plea. Petitioner denominates this ground as a "due process violation conviction was obtained by an unconstitutional procedure." *See* Petition, ¶ 12A. For his second ground, Petitioner claims that his trial counsel badgered him into pleading guilty despite knowing that the trial court had granted his suppression motion. Petitioner denominates this

[1] Petitioner also sought leave to withdraw the first MAR and this motion was denied. He sought a writ of mandamus because he thought that the superior court was not acting timely on his second MAR, and the superior court entered another order denying his second MAR. Thus, it appears that the superior court has entered four orders on Petitioner's two MARs.

ground as "ineffective assistance of counsel - involuntary plea." *See id.* at ¶ 12B. Respondent does not contend non-exhaustion, *see* Answer, ¶ 2, and as noted Respondent has moved for a summary judgment.

ANALYSIS

1. Summary Judgment Standard

In a habeas case, a set of allegations is not entitled to an evidentiary hearing just because it is, on its face, not without merit. *Blackledge v. Allison*, 431 U.S. 63, 80 (1977). Rather, "[a]s in civil cases generally, there exists a procedure whose purpose is to test whether facially adequate allegations have sufficient basis in fact to warrant plenary presentation of evidence. That procedure is, of course, the motion for summary judgment." *Id.* Summary judgment is appropriate when there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Zahodnick v. International Bus. Machs. Corp.*, 135 F.3d 911, 913 (4th Cir. 1997).

It is too glib, however, simply to say that the standard formulation for assessing summary judgment in the run-of-the-mill civil case applies in all habeas cases. For example, the usual summary judgment analysis contemplates accepting the evidence and all justifiable inferences from the evidence in the light most favorable to the non-movant. In the habeas context, however, if there is a contention that the evidence at trial does not support the underlying conviction, the appropriate standard calls for viewing the evidence in the light most favorable to the prosecution

and according the prosecution the benefit of all reasonable inferences from the evidence, and in that light, determining if any rational trier of fact could have found the petitioner guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). By way of another example, in a habeas claim of ineffective assistance of counsel, a federal court "must indulge a strong presumption that counsel's conduct was reasonable, and . . . the petitioner must overcome the presumption that the challenged conduct may have been sound trial strategy." *Strickland v. Washington*, 466 U.S. 668, 689 (1984). Nevertheless, the point is that habeas cases are subject to a summary judgment analysis as are all civil cases. *See* Rule 11, Rules Governing Section 2254 Cases In The United States District Courts; *see also Maynard v. Dixon*, 943 F.2d 407, 412–13 (4th Cir. 1991) (FED. R. CIV. P. 56 applies to habeas proceedings); *but cf.*, 17A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4268 (2d ed. 1988) ("The procedure of applications for habeas corpus for state prisoners is a confusing amalgam, to be found in a variety of different sources. There are a number of procedural provisions in the habeas corpus statutes themselves.").

Furthermore, because Petitioner filed his federal habeas petition after the April 24, 1996, enactment of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), the AEDPA amendments to 28 U.S.C. § 2254 apply. Under the AEDPA amendments, no habeas application by a state court prisoner may be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim (1) resulted in a decision that was contrary to,

or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d). In addition, factual determinations made by a state court are afforded a presumption of correctness. *See* 28 U.S.C. § 2254(e)(1).

Section 2254 precludes *de novo* federal habeas corpus review of state court decisions on the merits of a petitioner's claim. *Bell v. Jarvis*, 236 F.3d 149,159-60 (overruling *Cardwell v. Greene*, 152 F.3d 331, 339 (4th Cir. 1998)). When faced with a state court decision that does not explicitly cite or apply federal law, the habeas court should conduct an "independent examination of the record and the clearly established Supreme Court law." *Id*. at 158. Nevertheless, the habeas court must still confine its review to whether the "result" of the state court decision "is legally or factually unreasonable." *Id*. at 163 (quoting *Aycox v. Lytle*, 196 F.3d 1174, 1178 (10th Cir. 1999)); *see also Early v. Packer*, 537 U.S. 3, 8 (2002) ("Avoiding these pitfalls does not require citation of our cases--indeed, it does not even require *awareness* of our cases, so long as neither the reasoning nor the *result* of the state-court decision contradicts them.")(first emphasis in original, second emphasis added).

A state court decision is contrary to Supreme Court precedent if it arrives at a conclusion opposite that of the Supreme Court on a question of law or decides the

case differently from Supreme Court precedent based on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405 (2000). A state court decision is an unreasonable application of Supreme Court law "when a state-court decision unreasonably applies the law of [the Supreme] Court to the facts of a prisoner's case." *Id.* at 409. The "unreasonable application" standard does not admit of easy definition. For example, Justice O'Connor, writing for a majority of the Court, has said that "[t]he term 'unreasonable' is no doubt difficult to define." *Williams*, 529 U.S. at 410. Nevertheless, more recently the Supreme Court has said that the

> unreasonable application prong of § 2254 (d)(1) permits a federal habeas court to grant the writ if the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of petitioner's case. In other words, a federal court may grant relief when a state court has misapplied a governing legal principle to a set of facts different from those of the case in which the principle was announced. In order for a federal court to find a state court's application of our precedent unreasonable, the state court's decision must have been more than incorrect or erroneous. The state court's application must have been objectively unreasonable.

Wiggins v. Smith, 539 U.S. 510, 520-21 (2003) (citations omitted); *see also Penry v. Johnson*, 532 U.S. 782, 793 (2001) (stating that even if the habeas court determines that the state court decision applied federal law incorrectly, relief is only appropriate if the application was also objectively unreasonable); *Williams*, 529 U.S. at 410 (stating that an *unreasonable* application of federal law is different from an

incorrect application of federal law). Finally, even if the state court's adjudication is contrary to or an unreasonable application of Supreme Court precedent, a federal habeas court may not grant relief unless the constitutional error "had substantial and injurious effect or influence in determining the jury's verdict."[2] *Penry*, 532 U.S. at 795 (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)). These standards will guide the analysis below.

2. <u>The Claims</u>

Because there is no trial court record of the proceedings which brought everyone to this point, the summary which follows comes from Petitioner's

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[2] On direct review, a state appellate court may find a constitutional error harmless only if it is harmless beyond a reasonable doubt under the standard articulated in *Chapman v. California*, 386 U.S. 18, 24 (1967). In 1993, the United States Supreme Court made clear in *Brecht v. Abrahamson* that, with respect to non-structural errors, a federal habeas court reviewing a constitutional error must ask whether the error "'had substantial and injurious effect or influence in determining the jury's verdict.'" 507 U.S. at 623 (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)). The *Chapman* standard is "more stringent" than the *Brecht* standard, *California v. Roy*, 519 U.S. 2, 6 (1996) (Scalia, J., concurring), meaning that the petitioner seeking relief has a higher burden under the *Brecht* standard of review than under the *Chapman* standard of review. The circuits appear to disagree over whether, on federal habeas review, the *Brecht* "substantial and injurious" standard of review has survived the passage of the AEDPA amendments. This circuit's court of appeals has taken the position that the *Brecht* standard of review has indeed survived the passage of the AEPDA amendments. *See, e.g., Fullwood v. Lee*, 290 F.3d 663, 679 (4th Cir. 2002) (stating that even if the state court's adjudication of Petitioner's claim was contrary to or an unreasonable application of Supreme Court precedent, a federal habeas court may not grant habeas relief unless the error had a "substantial and injurious effect or influence in determining the jury's verdict," subject to the limitation that if the court is in "grave doubt" as to an error's harmlessness, the court must grant relief) (quoting *Brecht*, 507 U.S. at 637). I note that in this case the court does not reach the *Brecht* question because the state court's adjudication was neither contrary to nor an unreasonable application of Supreme Court precedent.

statements in this court or in the state courts. Petitioner and a companion were stopped for a traffic violation and a warning citation was issued. After the warning citation was issued, the state highway patrolman asked for permission to search and consent was granted. The search uncovered a sizeable quantity of currency ($7,450.00 in the trunk of the car and $2,060.00 on Petitioner), 450 grams of cocaine, and a pistol. Petitioner claims that he asked for and was granted permission to make a cellular telephone call from the trooper's patrol car, and unbeknownst to him, the call was recorded. Petitioner says that his suppression motion was heard and granted by the trial court, but the court refused to dismiss the charges. Worse still, the trial court accepted Petitioner's guilty plea on the basis of the "very evidence it had excluded from the criminal proceeding by suppression." Memorandum of Law, p.5 (attached to Petition). Moreover, Petitioner says that his trial counsel should not have urged him to plead guilty but should have followed Petitioner's wishes to take the case to trial on a not guilty plea; and because he did not, counsel was ineffective.[3]

Regardless of the circumstances and how they played out in Petitioner's cases, Respondent correctly notes that:

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[3] Petitioner has submitted a copy of a letter from the State Bar saying that a State Bar staffer has spoken to Petitioner's trial attorney who confirms that the trial judge called "both counselors to chambers and ruled for the defense." The letter goes on to say that "because the judge made a verbal ruling in chambers there is no written order." Petitioner's motion to expand the record to include this letter from the State Bar will be allowed.

> a guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann* [*v. Richardson*, 397 U.S. 759 (1970)].

Tollett v. Henderson, 411 U.S. 258, 267 (1973). While Petitioner here raises two claims in support of his federal habeas petition, both *McMann* and *Tollett* teach that his claim centers on allegations of ineffective assistance of counsel. In order to establish ineffective assistance of counsel in the context of a guilty plea, a petitioner must show a professional dereliction and a reasonable probability an objective, reasonable person in his shoes would not have pled guilty and would have insisted on going to trial, absent the alleged dereliction. *See Hill v. Lockhart*, 474 U.S. 52, 57 (1985). Petitioner faces a high hurdle in attempting to invalidate his guilty plea. "Because a plea of guilty is a solemn, judicial admission of the truth of the charge, a prisoner's right to contest it is usually, but not invariably, foreclosed." *Via v. Superintendent, Powhatan Corr. Ctr.*, 643 F.2d 167, 171 (4th Cir. 1981) (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). To collaterally attack a guilty plea, a petitioner must present valid reasons why his statements at the time of the plea should not be accepted as true. *Id*. at 172. Therefore, as an initial matter, the court must examine whether Petitioner's claims conflict with his statements at the time of his plea and, if so, whether Petitioner has given valid reasons for the discrepancy.

Id. at 171-72. In the absence of clear and convincing evidence to the contrary, Petitioner is bound by his statements to the contrary. *Little v. Allsbrook*, 731 F.2d 238, 239 n.2 (4th Cir. 1984).

As noted, Petitioner claims that he prevailed at the suppression hearing, but that his attorney still urged him to plead guilty. Petitioner says that counsel took this tack because the prosecutor was "highly upset" at the trial judge's suppression ruling; that the prosecutor said that he would seek to re-indict Petitioner on the charges he then faced and add a conspiracy charge; and that the prosecutor stated his intention to seek maximum, consecutive sentences on each charge. But if Petitioner perceived his attorney's advice to be so contrary to his own wishes,

> "[t]he sensible course would be to contest his guilt, prevail on his . . . claim at trial, on appeal, or, if necessary, in a collateral proceeding, and win acquittal, however guilty he might be. . . . If he nevertheless pleads guilty the plea can hardly be blamed on the [evidence] which in his view was inadmissible evidence an no proper part of the State's case."

McMann, 397 U.S. at 768.[4] At this stage, therefore, Petitioner's federal habeas petition is at most a claim that inadmissible evidence "was mistakenly assessed and that since he was erroneously advised . . . his plea was an unintelligent and voidable act. The Constitution, however, does not render pleas of guilty so vulnerable." *Id.* at 769. In the end, the Supreme Court said that a defendant's plea of guilty based on reasonably competent advice is an intelligent plea not open to attack on the

[4] Of course, now North Carolina permits a defendant to obtain review of an order denying a suppression motion, even if the defendant pleads guilty. *See* N.C. GEN. STAT. § 15A-979(b).

ground that counsel may have misjudged the admissibility of evidence. *Id.* at 770. The Court has noted that a number of factors play into the decision to plead guilty, such as the prospect of plea bargaining itself, the expectation or hope of a lessor sentence, or the convincing nature of the evidence, and that those factors "might well suggest the advisability of a guilty plea without elaborate consideration of whether pleas in abatement . . . might be factually supported." *Tollett*, 411 U.S. at 268.[5],[6]

Petitioner does not disavow a single one of his sworn declarations made on the transcript of plea form used in the superior court. For example, he averred that his lawyer had explained the charges to him, that he and his lawyer had discussed possible defenses to the charges, and that he was satisfied with his lawyer's services. He averred that he knew he had the right to plead not guilty, the right to a jury trial, and the right to confront and cross-examine witnesses against him. He acknowledged his guilt, under oath, and pled guilty, again acknowledging that his

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[5] Moreover, this court notes that, just as Petitioner could have appealed the suppression issue notwithstanding his guilty plea, the prosecutor likewise could have appealed an unfavorable ruling on the suppression motion. *See* N.C. GEN. STAT. § 15S-979(c). While this court need not speculate about the reasons why there was no formal ruling on the record by the trial judge on the suppression question, it might well be that the prosecutor alerted the defense and the trial judge that he intended to appeal any adverse decision, and for this reason, the prosecutor and Petitioner's attorney began their plea negotiations.

[6] It cannot be denied that Petitioner benefitted significantly by his plea bargain in that his exposure to prison was reduced from a maximum of two consecutive 219-month sentences to a maximum of two consecutive 84-month sentences, just on the trafficking charges alone.

plea was entered of his own free will, fully understanding what he was doing. A valid guilty plea constitutes an admission of all the material elements of the criminal charge and establishes the material facts necessary to support the conviction. *United States v. Willis*, 992 F.2d 489, 490 (4th Cir. 1993) (quoting and discussing *McCarthy v. United States*, 394 U.S. 459, 466 (1969), and *United States v. Broce*, 488 U.S. 563, 569 (1989)). Here, having voluntarily pled guilty, Petitioner effectively admitted all the elements of the offenses which were a part of the plea bargain. By doing so, Petitioner discharged the state of the burden of proving the material facts supporting the conviction, the presumed suppression of any evidence notwithstanding. Therefore, Petitioner's conviction must stand.

Simply as an aside, the Supreme Court has said "that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Stone v. Powell*, 428 U.S. 465, 481-82 (1976); *see also Wright v. West*, 505 U.S. 277, 293 (1992)("We have also held . . . that claims under *Mapp* [evidence obtained in violation of the Fourth Amendment] are not cognizable on habeas as long as the state courts have provided a full and fair opportunity to litigate them at trial or on direct review."); *Mueller v. Angelone*, 181 F.3d 557, 570 n. 8 (4th Cir. 1999)(acknowledging *Stone v. Powell* rule that federal habeas courts decline to review state court Fourth Amendment determinations); *Grimsley v.*

Dodson, 696 F.2d 303, 304 (4th Cir. 1982)("*Stone v. Powell* marked, for most practical purposes, the end of federal court reconsideration of Fourth Amendment claims by way of habeas corpus petitions where the petitioner has an opportunity to litigate those claims in state court."). Once a district court has inquired into whether the petitioner had an opportunity to raise a Fourth Amendment claim, "it need not inquire further into the merits of the case . . . unless the prisoner alleges something to indicate that his opportunity for a full and fair litigation of his Fourth Amendment claim or claims was in some way impaired." *Doleman v. Muncy*, 579 F.2d 1258, 1265 (4th Cir. 1978).

Because Petitioner had a full and fair opportunity to litigate his suppression claims in the state courts, the search and seizure claim is not subject to federal habeas review.

Last of all, to the extent that Petitioner claims that N.C. GEN. STAT. § 15A-979 requires that the trial judge order the evidence be excluded upon granting his motion to suppress and the failure of the trial judge to do so here entitles him to federal habeas relief, this federal habeas court does not sit to review errors of state law; rather this court is concerned with violations of federal constitutional law. *Williams v. Taylor*, 529 U.S. at 402-05 (2000) (O'Connor, J., concurring) (federal habeas relief under the AEDPA amendments is only available when the state court adjudication was contrary to or an unreasonable application of clearly established Supreme Court law); *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law

questions."); *Cooper v. Taylor*, 103 F.3d 366, 370 (4th Cir. 1996) (en banc) (stating that federal habeas review is limited to "violations of the United States Constitution or its laws and treaties"); *Kornahrens v. Evatt*, 66 F.3d 1350, 1357 (4th Cir. 1995) ("[B]asic principles of federalism permit us to review only those state court decisions that implicate federal constitutional rights.").

CONCLUSION

The nub of this analysis is that Petitioner has failed to show that the decisions of the state courts were contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court.[7] For all these reasons, IT IS RECOMMENDED that Respondent's motion for summary judgment (docket no. 6) be GRANTED. Petitioner's motion to expand the record (docket no. 19) is GRANTED.

Wallace W. Dixon
United States Magistrate Judge

November 17, 2005

[7] Considering that this court is as much concerned that the *result* of the state court decisions does not run contrary to Supreme Court law as it is that the state court decisions are not contrary to or an unreasonable application of Supreme Court law, it is worth noting that the Supreme Court has upheld consent searches following traffic stops without requiring that the officer tell the lawfully seized defendant that he is "free to go." *See Ohio v. Robinette*, 519 U.S. 33 (1996); *see also Ilinois v. Caballes*, 125 S. Ct. 834 (2005) (citing Supreme Court authority going back to 1983 allowing dog sniffs, and for the proposition that governmental conduct that reveals only possession of contraband compromises no legitimate privacy interest; concluding with upholding a narcotics-detection dog sniff during a lawful traffic stop). On the basis of this precedent from the Supreme Court, the result of the decisions in the superior court and the court of appeals denying Petitioner's MARs, therefore, cannot be said to run afoul of Supreme Court law.