

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ANTHONY CARTER,	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 3:98 CV 1410 (CFD)
	:	
LESLIE E. BROOKS, WARDEN,	:	
Respondent	:	

RULING ON PETITION FOR HABEAS CORPUS

Anthony Carter petitions the Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He seeks release from state custody on the ground that his guilty pleas in state court were accepted, and his conviction and sentence were imposed, in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution. The petition is DENIED for the following reasons.

I. Background

The petitioner was charged by an information filed on September 13, 1994¹ in the Connecticut Superior Court with the following violations of Connecticut law: three counts of selling narcotics in violation of Conn. Gen. Stat. § 21a-277(a); three counts of conspiracy to sell narcotics in violation of Conn. Gen. Stat. §§ 53a-48 and 21a-278(b); three counts of selling narcotics within 1,500 feet of a public housing project in violation of Conn. Gen. Stat. § 21a-278a(b); violation of the Corrupt Organizations and Racketeering Activity Act (“CORA”), Conn. Gen. Stat. § 53-395(b) and (c); and conspiracy to violate CORA, in violation of Conn. Gen. Stat. §§ 53a-48 and 53-395(b) and (c).

¹The record indicates that the information was originally filed on August 29, 1994.

On March 22, 1995, the petitioner pled guilty to the two CORA counts and the three counts of selling narcotics. He pled guilty pursuant to a plea agreement with the state, under which the state agreed to recommend to the court a sentence of sixteen years in prison and the petitioner agreed not to argue for a sentence of fewer than eight years. The state also agreed to dismiss the other charges against the petitioner. After the state placed the plea agreement on the record and recited the factual bases for the petitioner's guilty pleas, the trial court canvassed the petitioner to determine whether his guilty pleas were knowingly, intelligently, and voluntarily made and found that they were.

On May 25, 1995, the trial court accepted the plea agreement, merged the two CORA charges,² and sentenced the petitioner to twelve years on the merged CORA charges and on each narcotics charge, with the sentences to run concurrently.

The petitioner appealed his conviction to the Connecticut Appellate Court on July 17, 1996, on the ground that his guilty pleas were not knowingly and voluntarily entered because the trial court failed to advise him of his right against self-incrimination and that he would waive that right by pleading guilty.³ See State v. Carter, 685 A.2d 1129, 1130 (Conn. App. Ct. 1996). He also challenged the trial court's consideration of allegedly unreliable information presented at his sentencing hearing as a violation of his due process rights. See id. On November 19, 1996, the appellate court reversed the petitioner's conviction on the ground that "the trial court never apprised the [petitioner] that he did not have to plead guilty." Id. at 1133. Consequently, the

²Apparently, the court "merged" the CORA charges by imposing concurrent sentences for each charge. See Resp't's Mem. Law Opp'n Pet. Writ Habeas Corpus at 2.

³The petitioner never moved to withdraw his guilty pleas before the trial court.

appellate court held, the trial court's plea canvass violated the petitioner's right against self-incrimination and thus his guilty pleas were not knowingly and voluntarily entered. See id.

The Connecticut Supreme Court granted the state's petition for certification to appeal to determine whether the appellate court correctly held that the petitioner's guilty pleas were not knowingly and voluntarily entered. See State v. Carter, 703 A.2d 763, 764 (Conn. 1997). On December 16, 1997, the Connecticut Supreme Court reversed the appellate court decision on the ground that, although the petitioner was not explicitly advised of his right against self-incrimination, his "ability to realize that a guilty plea incriminated him, in conjunction with the [trial] court's explanation of his right to trial," showed that his guilty pleas were knowingly and voluntarily entered. Id. at 767. The court therefore held that the petitioner's "knowledge that his voluntary, freely given pleas of guilty were a waiver of his right to trial meets the constitutional requirements of a guilty plea." Id.

The Connecticut Supreme Court also remanded the case to the appellate court with instructions to consider the petitioner's remaining claim on appeal, which concerned his due process challenge to the information presented at his sentencing hearing. See id. at 401. On April 21, 1998, the appellate court affirmed the petitioner's conviction on remand from the Connecticut Supreme Court. See State v. Carter, 710 A.2d 1371 (Conn. App. Ct. 1998).

The petitioner then filed this petition for a writ of habeas corpus.⁴ He claims that his guilty pleas were constitutionally invalid because he was not informed by the state trial court at the plea colloquy of his right against compelled self-incrimination, and because he did not

⁴The parties do not dispute that the petitioner exhausted his state court remedies and satisfied the other procedural prerequisites to filing a habeas corpus petition. See 28 U.S.C. §§ 2244(b), (d), 2254(b).

intelligently and voluntarily waive that right. He therefore contends that he was convicted and sentenced in violation of the Fifth and Fourteenth Amendments. The respondent opposes the habeas corpus petition, relying principally on the reasoning of the Connecticut Supreme Court's decision.

II. Discussion

A. Standard of Review

A federal court may not grant a writ of habeas corpus on behalf of a petitioner challenging his or her state guilty plea conviction unless that conviction:

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; 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).⁵ In construing these provisions, a federal court must presume that the state court's factual findings are correct, and the petitioner has the burden of rebutting this presumption by clear and convincing evidence. See 28 U.S.C. § 2254(e)(1); Nelson v. Walker, 121 F.3d 828, 833 n.4 (2d Cir. 1997). Furthermore, “[t]he question of whether or not a plea of guilty has been entered voluntarily within the meaning of the Constitution is a complex one that involves questions of law and questions of fact.” Matusiak v. Kelly, 786 F.2d 536, 543 (2d Cir. 1986). However, the ultimate question of “[w]hether a plea of guilty is voluntary for purposes of the Federal Constitution is a question of federal law[,] and not a question of fact” that is entitled to a

⁵Although the petitioner was originally convicted in 1995, the Court concludes that these provisions of § 2254(d), which became effective on April 24, 1996, apply in this case because the petitioner did not seek habeas corpus relief until 1997. See Williams v. Taylor, 529 U.S. 362, 402 (2000); Lindh v. Murphy, 521 U.S. 320, 336-37 (1997).

presumption of validity as determined by prior state proceedings. Id. at 543-44 (original quotation alterations omitted).

In this case, the parties agree that the Court must decide a purely legal question: whether the petitioner's guilty pleas in state court were constitutionally valid. The parties agree that there are no disputed facts or evidence; the Court must resolve this legal issue based on the undisputed facts in the Connecticut Supreme Court's decision and the underlying transcripts of the petitioner's guilty plea proceeding.⁶ Accordingly, the Court must determine only whether the Connecticut Supreme Court's decision was contrary to, or involved an unreasonable application of, clearly established federal law. See 28 U.S.C. § 2254(d)(1).

Assuming that the U.S. Supreme Court has clearly established the constitutional requirements of a valid guilty plea, see infra Part II.C, the Court concludes that the Connecticut Supreme Court's decision in this case was not contrary to, and did not involve, an unreasonable application of that law. See Lurie v. Wittner, 228 F.3d 113, 127 (2d Cir. 2000) (interpreting Williams v. Taylor, 529 U.S. 362 (2000)); see also Washington v. Schriver, No. 00-2195, 2001 WL 12841, at *6-8 (2d Cir. 2001). The Connecticut Supreme Court's decision was not "diametrically different," "opposite in character or nature," or "mutually opposed" to federal precedents concerning the constitutional requirements of a valid guilty plea. See Lurie, 228 F.3d at 127-29. The Connecticut Supreme Court also correctly identified the governing legal standard for a valid guilty plea and applied that standard reasonably to the undisputed facts of this case. See id.

⁶The parties agree that an evidentiary hearing is not required.

B. State Court Rulings

The petitioner in this case contends that the Connecticut Supreme Court's decision affirming the validity of his guilty pleas violated his rights under the Fifth and Fourteenth Amendments. The petitioner argues that, although he was adequately advised of his constitutional rights to a jury trial and to confront witnesses against him, he was not advised of his Fifth Amendment right against self-incrimination. He was not advised by the trial court that if he pled guilty he would be required to admit his guilt and incriminate himself. Therefore, he argues, he did not voluntarily and knowingly waive his right against self-incrimination.

1. Connecticut Appellate Court Ruling

The Connecticut Appellate Court concluded that the trial court did not advise the petitioner sufficiently of his right against self-incrimination or concerning his waiver of that right. In its ruling reversing his conviction, the appellate court quoted the following from the transcript of his guilty plea proceeding before the trial court:

The Court: And you understand that you could have gone to trial on each and every one of these counts? Mr. Schoenhorn, your attorney, could have represented you before a judge or jury. If you had a trial, the state would have been required to prove each of the counts beyond a reasonable doubt. Witnesses would have been subpoenaed. They could have been subject to cross-examination. If you so desired, you could have taken the stand on your own behalf, if that was your choice of counsel. And basically, because you're pleading guilty here voluntarily before for this court today, do you understand that you're waiving your ability to have a trial on each and every one of these counts here this afternoon?

The Defendant: Yes.

Carter, 685 A.2d at 1132 n.2. Based on this excerpt of the proceeding, which the appellate court concluded was the sum total of the trial court's advisement of the petitioner's constitutional rights, the court found that "[a]t no point did the trial court directly address itself to the core

constitutional right against self-incrimination as guaranteed to the defendant under the fifth and fourteenth amendments to the federal constitution.” Id. at 1132-33. The court further held that the cumulative effect of the trial court’s canvass was insufficient to advise the petitioner of his constitutional right against self-incrimination. See id. at 1133. Accordingly, as indicated, the appellate court concluded that the trial court never apprised the petitioner that he did not have to plead guilty, which violated his right against self-incrimination and thus invalidated his guilty pleas as not knowingly and voluntarily entered. See id.

2. Connecticut Supreme Court Ruling

In reviewing the appellate court determination that the petitioner’s guilty pleas were not knowingly and voluntarily entered, the Connecticut Supreme Court evaluated the petitioner’s plea colloquy before the trial court more broadly. Although the state supreme court agreed with the appellate court that the petitioner was not explicitly advised that he did not have to plead guilty, it disagreed with the appellate court’s conclusion that the cumulative effect of the trial court’s plea canvass was insufficient to advise the petitioner of his constitutional right against self-incrimination.

The state supreme court found:

The defendant was told [by the trial court] that the purpose of the [guilty plea] canvass was “to make sure that you’re giving these pleas—all five pleas that you have just rendered to the court, voluntarily and of your own free will. If you have any questions at any particular period of time, please do not hesitate to ask me.” The defendant later replied, in answer to a question, that he was entering all five pleas voluntarily and of his own free will. He denied that anyone was forcing him to enter those pleas.

Carter, 703 A.2d at 766. The state supreme court also considered the excerpt of the guilty plea proceeding quoted by the appellate court, see supra, and further concluded:

The transcript shows that the defendant knew that he had an alternative to pleading guilty and that this alternative permitted him to challenge the state's factual allegations and legal theories. Defense counsel, after describing in detail two such legal theories, indicated that the defendant waived them. The court then stated, "And you've discussed that with Mr. Carter, and he understands that you're waiving those particular issues that you addressed to the Court; is that accurate? Is that true, Mr. Carter?" The defendant responded, "yes."

....

The transcript also shows that the defendant knew that his waiver of a trial and entry of guilty pleas meant that he was admitting the underlying facts and thereby incriminating himself. When the trial court, for the second time, asked the defendant if he understood that he waived all of his constitutional privileges before the court, he replied, "yes." Then, when asked if he had any questions of the court, the defendant stated that he did not want to be labeled as a member of a gang. He denied, supplemented by his counsel's remarks, that he was a member of the Twenty Love gang, although he admitted that his association with it supported the conspiracy charge.

Carter, 703 A.2d at 766-67. Accordingly, as indicated, the Connecticut Supreme Court concluded:

The defendant's ability to realize that a guilty plea incriminated him, in conjunction with the court's explanation of his right to trial, shows the voluntary and knowing nature of his guilty pleas.

Although the words "voluntary waiver of the right against self-incrimination" were not used, the [petitioner] knew that he was giving up the right to a trial, and he stated that he was doing so voluntarily and of his own free will. Although the plea canvass here was not couched in direct language that the defendant had a right to persist in his pleas of not guilty and have a trial, it is clear from the transcript that the defendant understood his waiver of that trial was brought about only by his voluntary pleas of guilty, made of his own free will and without pressure from anyone else.

Id. at 767. The state supreme court therefore reversed the appellate court, affirmed the trial court's conclusion that the petitioner's guilty pleas were knowingly and voluntarily entered, and upheld his state court conviction. See id.

In reaching this conclusion, the Connecticut Supreme Court relied on its own decisions in State v. Nelson, 605 A.2d 1381 (Conn. 1992), and State v. Badgett, 512 A.2d 160 (Conn. 1986),

each of which interpreted the U.S. Supreme Court’s decision in Boykin v. Alabama, 395 U.S. 238 (1969). In Nelson, the Connecticut Supreme Court held:

Boykin does not explicitly delineate the scope of the application of the trial court’s obligation to inform the defendant of his privilege against self-incrimination . . . [and] conclude[d] that the federal constitution requires only that a defendant, at the time of the entry of a plea of guilty or nolo contendere . . . be informed by the court that, in conformity with his rights against self incrimination, he could not be compelled to enter that plea.

605 A.2d at 1384. The Nelson court also held that under the “tenor of the Boykin opinion for protection of [a defendant’s] privilege against self-incrimination, the federal constitution mandates only that a defendant be apprised of the fact that he does not have to enter a plea of guilty or nolo contendere and thus incriminate himself.” Id. at 1384.

Similarly, the Connecticut Supreme Court held in Badgett that “[u]nder Boykin, in order for a plea to be knowingly, voluntarily and intelligently made, a trial court is required to advise a defendant that his plea operates as a waiver of three fundamental constitutional rights,” including the right against self-incrimination. 512 A.2d at 164. However, a court does not need to advise a defendant specifically that he has a right against self-incrimination as long as “the substance of that right was sufficiently conveyed” to him. Id. at 165.

Accordingly, because in this case there is no dispute that the trial court failed to advise the petitioner specifically of his right against self-incrimination, the validity of the petitioner’s guilty pleas depends principally on whether the Connecticut Supreme Court interpreted the Boykin decision correctly to require only that a defendant be informed of the substance of that right. In addition, if the state supreme court correctly interpreted Boykin, the validity of the petitioner’s guilty pleas depends on whether he was adequately informed during his plea colloquy that he

could not be compelled to plead guilty. The Court therefore proceeds to consider the constitutional requirements of a valid guilty plea in that context under Boykin.⁷

C. Constitutional Requirements of a Valid Guilty Plea

As indicated, the petitioner does not dispute that the trial court properly advised him of his constitutional rights to a jury trial and to confront witnesses against him. He only contends that, in ruling that the trial court was not required to advise him specifically of his right against self-incrimination, the Connecticut Supreme Court improperly concluded that the trial court's advisement of his jury trial right was sufficient to convey the substance of his right against self-incrimination; and that the trial court's advisement was sufficient to allow him to waive that right knowingly and voluntarily. The petitioner argues that, contrary to Nelson and Badgett, and ultimately Boykin, the trial court's advisement of his jury trial right was not sufficient to notify him that he had a right not to incriminate himself, or that he would have to give up that right and admit his guilt if he pled guilty.

1. Guilty Pleas Generally

“The procedural rights guaranteed to [an] accused by the United States Constitution reflect the high premium our nation places upon preventing innocent persons from being falsely or wrongly convicted.” Siegel v. New York, 691 F.2d 620, 624 (2d Cir. 1982). In light of this principle, a guilty plea is “a grave and solemn act to be accepted only with care and discernment.”

⁷Because the Court's habeas corpus review is limited to resolving the federal constitutional issues raised by the petitioner, see 28 U.S.C. § 2254(a), this opinion does not address or resolve any issues concerning Connecticut rules of criminal procedure, except to the extent that those rules conflict with federal constitutional requirements and are therefore preempted. See Barker v. Wingo, 407 U.S. 514, 523 (1972) (“[The federal courts] do not establish procedural rules for the States, except when mandated by the Constitution.”); cf. Fed. R. Crim. P. 11.

Brady v. United States, 397 U.S. 742, 748 (1970). It is “more than an admission of past conduct; it is the defendant’s consent that judgment of conviction may be entered without a trial—a waiver of his right to trial before a jury or a judge.” Id. “To protect [a] defendant from falsely accusing himself by pleading guilty, due process requires an affirmative showing that a guilty plea is intelligently and voluntarily entered.” Siegel, 691 F.2d at 624.

2. The Boykin Decision

The U.S. Supreme Court set forth the constitutional requirements for a valid guilty plea more specifically in its Boykin decision. The Court in that case considered the validity of five guilty pleas entered by a petitioner in state court in Alabama, after which a jury sentenced him to death. The record in the case revealed that “the [trial court] judge asked no questions of [the] petitioner concerning his plea, and the petitioner did not address the court.” Boykin, 395 U.S. at 239. Consequently, after remarking that “[i]gnorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality,” id. at 242-43, the Court concluded that the petitioner’s guilty pleas were not knowingly and voluntarily entered. See id. at 244.

In reaching this conclusion, the Boykin Court reasoned that “[s]everal federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial,” including the right against compulsory self-incrimination guaranteed by the Fifth and Fourteenth Amendments. Id. at 243. The Court also indicated that a waiver of these rights cannot be presumed from a silent record. See id. A trial court may not accept a petitioner’s guilty plea “without an affirmative showing that it was intelligent and voluntary.” Id. at 242. Therefore, the Court concluded,

[w]hat is at stake for an accused facing . . . imprisonment demands the utmost solicitude[,] of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences. When a judge discharges that function, he leaves a record adequate for any review that may be later sought.

Id. at 243-44.

Notwithstanding the Boykin Court's mandate that the prerequisites of a valid waiver must be "spread on the record," id. at 242; see also Barker v. Wingo, 407 U.S. 514, 526 (1972), the Supreme Court "in no way intimated the precise terms of the inquiry that the trial judge should make of a defendant before accepting his plea." Korenfeld v. United States, 451 F.2d 770, 773 (2d Cir. 1971). "Rather than mandating a specific catechism, in determining voluntariness and intelligence, due process requires only that the courts provide safeguards sufficient to insure the defendant what is reasonably due in the circumstances." Siegel, 691 F.2d at 626 (internal quotation marks omitted). In other words, "[a] guilty plea will not be invalidated simply because of the district court's failure . . . to enumerate one or more of the rights waived by the defendant" as the result of such a plea. Kloner v. United States, 535 F.2d 730, 733 (2d Cir. 1976) (upholding a guilty plea despite the trial court's failure to enumerate specific constitutional rights during its Rule 11 plea canvass). A guilty plea may be upheld "as long as the district judge has adequately informed the defendant of the alternate courses of action open to him, so that the defendant has not, either because of ignorance or misinformation, been misled into entering the plea." Id. (internal quotation marks and citations omitted); see Perry v. Vincent, 420 F. Supp. 1351, 1358 (E.D.N.Y. 1976) ("Other Circuits [including the Fourth, Fifth, Ninth, and Tenth Circuits] have held that Boykin does not require that the state courts read a litany of constitutional rights to defendants in order to ensure that their guilty pleas are voluntarily entered."); see also United

States v. Sherman, 474 F.2d 303, 306, 309 (9th Cir. 1973); United States v. Murphy, No. 97-1729, 1999 WL 107683, at *2 (6th Cir. Feb. 11, 1999) (stating that failure to advise a defendant of his right against self-incrimination does not preclude an intelligent and voluntary guilty plea).

Where a defendant has not been expressly advised of all of the constitutional rights mentioned in Boykin, a court must determine the voluntariness of his guilty plea by considering “all of the relevant circumstances surrounding it.” Perry, 420 F. Supp. at 1357 (quoting Brady, 397 U.S. at 749). “[A] guilty plea entered by one fully aware of the direct consequences [of that plea] . . . must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper.” Brady, 397 U.S. at 755 (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (en banc), rev’d on other grounds, 356 U.S. 26 (1958)).

Thus, as in this case, in the context of the trial court’s failure to advise the petitioner specifically of his constitutional right against compelled self-incrimination prior to accepting his guilty pleas, the Federal Constitution appears to require only that this court determine whether the petitioner was informed, in substance, that he had a right not to plead guilty and incriminate himself, and whether the record shows any evidence of compulsion. In this sense, the Constitution mandates that the Court focus on the compulsion aspect of the right against compelled self-incrimination and search the record for evidence of such compulsion. See McMann v. Richardson, 397 U.S. 759, 766 (1970) (“A conviction after a plea of guilty normally rests on the defendant’s own admission in open court that he committed the acts with which he is charged. That admission may not be compelled.”). As long as the petitioner understood that he did not have to plead guilty, and as long as there is no evidence of compulsion in the record, he

cannot now claim he was compelled to testify against himself in violation of the Fifth and Fourteenth Amendments.

3. Advisement of Constitutional Rights in this Case

It is clear from the record of the petitioner's plea colloquy in this case that he was advised, and he understood, that he did not have to plead guilty and that he had a right to a jury trial. During the petitioner's plea colloquy, the trial court recited the charged offenses. The court then asked the petitioner: "And you understand that you could have gone to trial on each and every one of these counts? Mr. Schoenhorn, your attorney, could have represented you before a judge or jury?" See Tr. Mar. 22, 1995, at 14. The trial court also advised the petitioner: "If you so desired, you could have taken the stand on your own behalf, if that was your choice. And basically, because you're pleading here voluntarily before this Court today, do you understand that you are waiving your ability to have a trial on each and every one of these counts here this afternoon?" See id. Based on this inquiry, the Court agrees with the Connecticut Supreme Court's conclusion that "the defendant knew that he had an alternative to pleading guilty and that this alternative pleading permitted him to challenge that state's factual allegations and legal theories." Carter, 703 A.2d at 767.

The Court also agrees with the Connecticut Supreme Court's conclusion that he knew by waiving these rights and pleading guilty he would have to admit his guilt and incriminate himself. The petitioner freely admitted his guilt throughout the plea proceeding. He admitted selling narcotics to undercover police officers, which formed a factual basis for his guilt, and he admitted his association with the gang Twenty Love and his role in its drug dealing organization for the purposes of satisfying the CORA statute. See Tr. Mar. 22, 1995, at 7, 8-9, 15-17. He also

advised the trial court twice, in response to the court's questions, that he intended to waive each of his constitutional rights and that he did so of his own free will and with the advice of counsel. See id. at 14, 15. While the petitioner was not explicitly advised that if he chose to plead guilty instead of going to trial that he would have to admit his guilt and therefore waive his right to remain silent and not incriminate himself, he was clearly aware of the direct consequences of his guilty pleas and was not misled into entering those pleas.

As the Connecticut Supreme Court correctly concluded in its Nelson and Badgett decisions, what was required for the state trial court to accept the petitioner's guilty pleas as voluntarily, knowingly, and intelligently made was that he be made aware of the nature and consequences of his guilty plea, including his right not to admit his guilt. Due process did not require the state trial court to discuss the petitioner's right against compelled self-incrimination explicitly as a prerequisite to accepting a guilty plea. Nevertheless, although it is always more advisable for a court to discuss a defendant's right against compelled self-incrimination more explicitly, the record in this case demonstrates adequate knowledge by the petitioner of that right.

D. Waiver of Constitutional Rights

The Connecticut Supreme Court also correctly concluded that the petitioner waived his constitutional rights, including his right against compelled self-incrimination. He knew that by deciding to plead guilty and forego a jury trial, he necessarily waived that right and was required to incriminate himself.

“Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.” Brady, 397 U.S. at 748; see also Innis v. Dalsheim, 864 F.2d 974, 977 (2d Cir.

1988). Waivers of constitutional rights may not be presumed, and courts should not acquiesce in the loss of fundamental rights. See Barker, 407 U.S. at 525-26. Constitutional rights such as the right against compelled self-incrimination “must be exercised or waived at a specific time or under clearly identifiable circumstances.” Id. at 529.

In this case, the petitioner waived his constitutional rights knowingly and voluntarily, and was fully aware that he would incriminate himself by pleading guilty. As indicated, the petitioner freely admitted his guilt throughout the plea proceeding. He admitted selling narcotics to undercover police officers, which formed a factual basis for his guilt. The petitioner was also represented by counsel, who raised two possible legal defenses at the plea colloquy, which the petitioner explicitly waived in response to questions from the trial court.⁸ In addition, during the plea colloquy, the petitioner asked specifically that the trial court clarify that he was not a member of Twenty Love. See Tr. Mar. 22, 1995, at 15-16; Carter, 703 A.2d at 767. However, his counsel agreed that he was “associated” with Twenty Love for the purposes of satisfying the elements of the CORA offense to which he was pleading guilty. See Tr. Mar. 22, 1995, at 17. The petitioner also did not object to this characterization of his association with Twenty Love, even when subsequently asked by the trial court whether he had any questions or confusion concerning the statements of his counsel during the guilty plea proceeding. See id. at 17; Siegel, 691 F.2d at 626 (involving a defendant who was represented by counsel and failed to raise certain issues during a plea proceeding).

⁸The petitioner waived any claim that his three sales to undercover police officers constituted one pattern of conduct rather than three separate offenses. He also waived any claim that he did not have a controlling interest in the drug dealing organization as required under the CORA statutes. See Tr. Mar. 22, 1995, at 8-9.

Although the petitioner may have requested a clarification of his role in Twenty Love, his admission of guilt was not ambiguous or in any way “limited or conditional.” Kloner, 535 F.2d at 734. Contrary to the petitioner’s contentions, his request to clarify his association with Twenty Love does not suggest that he misunderstood his constitutional right against self-incrimination. This clarification request merely indicates that the petitioner did not want to be labeled as a “gang member” prior to sentencing or while serving a sentence in prison.

Furthermore, absent contrary evidence from the petitioner, the Court assumes that the petitioner had been informed of his right against compelled self-incrimination when he first appeared or was arraigned on the various charges against him. Cf. United States v. Dickerson, 901 F.2d 579, 583 (7th Cir. 1990) (quoting Honeycutt v. Ward, 612 F.2d 36, 41 (2d Cir. 1979): “[T]here is a strong presumption of regularity in state judicial proceedings.”). It is also likely that other factors influenced the petitioner’s knowledge of the incriminating effect of his guilty pleas, including the fact that he consulted with his attorney and his attorney’s partner prior to deciding to plead guilty. See Tr. Mar. 22, 1995, at 15. The petitioner was represented by “competent counsel and [had] full opportunity to assess the advantages and disadvantages of a trial as compared with those attending a plea of guilty; there was no hazard of an impulsive and improvident response to a seeming but unreal advantage.” Brady, 397 U.S. at 754. The petitioner’s prior experience with the criminal justice system, which includes several convictions in Connecticut and New York, see Tr. May 25, 1995, at 17-20, 32-33, also suggests that he was aware of, and knowingly waived, his constitutional rights. See Parke v. Raley, 506 U.S. 20, 37 (1992) (“We have previously treated evidence of a defendant’s prior experience with the criminal justice system as relevant to the question whether he knowingly waived his constitutional

rights.”). In addition, the petitioner’s guilty pleas were entered “in open court and before a judge obviously sensitive to the requirements of the law with respect to guilty pleas.” Brady, 397 U.S. at 754-55. Accordingly, there is no reason to conclude that the petitioner would not have proceeded with his guilty pleas if the trial court had explicitly informed him of his right against compelled self-incrimination.

III. Conclusion

It is the preferable course for trial courts—state and federal—to advise criminal defendants explicitly of their right against self-incrimination prior to accepting their guilty pleas. Cf. Fed. R. Crim. P. 11. However, the U.S. Constitution only requires that courts inform defendants of the substance of that right and ensure valid waivers of that right. The record in this case shows that occurred. Accordingly, for the preceding reasons, the petition for a writ of habeas corpus is DENIED. The Clerk is directed to close this case.

SO ORDERED this 13th day of February 2001 at Hartford, Connecticut.

/s/
Christopher F. Droney
United States District Judge