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283 Ga. 28

S07A1321. SUTTON v. SANDERS.

**Sears**, Chief Justice.

To avoid enhancement of a federal sentence in 2001, Larry Dennis Sutton filed a petition for writ of habeas corpus in the Fulton County Superior Court challenging his 1993 guilty plea to state drug charges. The habeas court denied the petition, and Sutton appealed. The district attorney's office opposed Sutton's petition in the habeas court but has withdrawn its opposition to Sutton's appeal. For the reasons that follow, we reverse the judgment of the habeas court.

Sutton's challenge to his 1993 guilty plea rests on the United States Supreme Court's seminal decision in Boykin v. Alabama.<sup>1</sup> In Boykin, the high court held that a guilty plea must be set aside unless the record of the plea colloquy or extrinsic evidence affirmatively shows that the defendant knowingly, intelligently, and voluntarily waived his or her constitutional rights: (1) against compulsory self-incrimination; (2) to be tried by a jury; and (3) to

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<sup>1</sup>395 U. S. 238 (89 SC 1709, 23 LE2d 274) (1969).

confront his or her accusers.<sup>2</sup> The transcript of the 1993 plea colloquy affirmatively shows that Sutton was advised of his constitutional rights against self-incrimination and to confront his accusers, but it does not show that he was advised of his constitutional right to a jury trial. The State has pointed us to no extrinsic evidence in the record from which we could conclude that Sutton knowingly, intelligently, and voluntarily waived his right to a jury trial on the 1993 drug charges, and our own review of the record has uncovered none. Accordingly, we must reverse the trial court's judgment denying Sutton's habeas petition.

Judgment reversed. All the Justices concur.

**Decided January 28, 2008.**

Habeas corpus. Fulton Superior Court. Before Judge Bedford.

Kendal D. Silas, for appellant.

Paul L. Howard, Jr., District Attorney, David K. Getachew-Smith, Bettianne C. Hart, Assistant District Attorneys, Thurbert E. Baker, Attorney

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<sup>2</sup>Boykin, supra, 395 U. S. at 242-243.

General, for appellee.