IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL SESSION, 1995

RICKY GENE WILLIAMS,	)	**C.C.A. NO. 03C01-9412-CR-00451**
	)	
Appellant,	)	
	)	
	)	**MCMINN COUNTY**
VS.	)	
	)	**HON. MAYO L. MASHBURN**
STATE OF TENNESSEE,	)	**JUDGE**
	)	
Appellee.	)	(Post Conviction)

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE CIRCUIT COURT OF MCMINN COUNTY

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

The Petitioner appeals as of right from the trial court's denial of his petition for post-conviction relief. The Petitioner sought relief alleging that his guilty pleas were not entered into voluntarily, understandingly, and knowingly. After conducting an evidentiary hearing, the trial court denied relief. We affirm the judgment of the trial court.

On August 17, 1979, the Petitioner pleaded guilty to two counts of first degree burglary, for which he served one year in the county jail with the balance of the sentence suspended. The Petitioner is currently incarcerated in the Tennessee Department of Correction serving a 202-year sentence for four counts of aggravated rape and a contraband charge. The two burglary convictions were used to enhance the subsequent aggravated rape convictions.

On May 9, 1989, the Petitioner filed a petition for post-conviction relief with the McMinn County Criminal Court alleging that the pleas of guilty to the two first degree burglary convictions from 1979 did not comply with the constitutional requirements of Boykin v. Alabama, 385 U.S. 238, 89 S. Ct. 1709 (1969), and State v. Mackey, 553 S.W.2d 337 (Tenn. 1977), in that he was not advised of his right to not testify, his right against self-incrimination, and his right to confront and cross-examine prosecution witnesses. Thus, he contends that the pleas were not entered voluntarily and knowingly. Counsel was appointed to represent the Petitioner, and a hearing on the post-conviction relief petition was conducted on September 2, 1994. The trial court dismissed the petition by an order issued on December 19, 1994.

In Boykin v. Alabama, 395 U.S. 238 (1969), the United States Supreme Court held that the record must show that a guilty plea was made voluntarily, understandingly and knowingly. In Boykin, the Supreme Court held that an entry of a guilty plea effectively constituted a waiver of the constitutional rights against compulsory self-incrimination, the right to confront one's accusers, and the right to trial by jury. Id. at 243. If a guilty plea is not voluntary and knowing, it has been entered in violation of due process and is, therefore, void.

The United States Supreme Court stated in Boykin that a voluntary plea cannot be found from a silent record. Boykin, 395 U.S. at 242. The issue on whether a guilty plea is invalid is controlled by State v. Neal, 810 S.W.2d 131 (Tenn. 1991), and Johnson v. State, 834 S.W.2d 922 (Tenn. 1992), which outline the procedural and substantive requirements for the entry of a guilty plea as a valid judgment of conviction. These cases also dictate the standard of review to determine whether a conviction based upon a guilty plea was indeed valid.

Our state supreme court has noted that it is the result, not the process, that is essential to a valid plea. Johnson, 834 S.W.2d at 924. The failure of the trial court to advise a guilty-pleading defendant of his Boykin rights may not result in the overturning of a conviction if the record reflects that the petitioner entered a voluntary and knowing plea. Id. at 926. The critical inquiry is whether the Petitioner had knowledge of certain rights and waived those rights knowingly and voluntarily, not whether the trial court was the source of that knowledge.

A petitioner's claim that he was not advised of his Boykin rights does not constitute sufficient proof that the plea was not knowing and voluntary. Id. If the petitioner makes a prima facie case by showing that the trial court failed to give the mandated advice, the burden shifts to the State to prove by clear and convincing

evidence that the plea was knowing and voluntary, "in which event the plea will not be disturbed." Id.

If the record reflects that the petitioner was aware of his constitutional rights, the petitioner is not entitled to relief on the ground that the trial court failed to give mandated advice. Johnson, 834 S.W.2d at 926. However, if the State does not meet the burden of showing that the plea was entered knowingly and voluntarily, the petitioner will be entitled to relief. Id.

In the case sub judice, the Petitioner argues that his pleas of guilt to the first degree burglary charges entered on August 17, 1979 were not knowingly and voluntarily entered. The Petitioner contends that the trial court did not advise him of any of his constitutional rights at the guilty plea hearing, thus the two judgments should be vacated. The transcript of the guilty plea hearing indicates that the following interchange took place among the Petitioner, the Petitioner's counsel, Donald Reid, and the trial court:

> MR. REID: 8437, and 36, your Honor, we are entering a plea of guilty in both of those.
>
> THE COURT: 8437, and 36?
>
> MR. REID: Yes, sir.
>
> THE COURT: All right. Guilty of what?
>
> MR. REID: First degree burglary.
>
> THE COURT: All right.
>
> MR. REID: Five to ten in the state penitentiary.
>
> THE COURT: Concurrent?
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> MR. REID: Concurrent, to be suspended after one year in the county jail. He's prepared to go into custody today, your Honor.

THE COURT: Okay. Now, Mr. Williams, you understand that you are pleading guilty to five to ten years on a burglary charge, and upon recommendation of the state the Court is allowing you to serve that in the county jail and to be suspended after serving one year?

MR. WILLIAMS: Yes, sir.

THE COURT: Do you understand that?

MR. WILLIAMS: Yes, sir.

THE COURT: All right.

At the post-conviction relief hearing, the Petitioner testified that at the time of the guilty plea hearing he had a tenth grade education and was not knowledgeable about the law. He testified that he did not know what the constitution was and did not even know what a jury trial was until after his conviction on rape charges in 1983. The Petitioner testified that in pleading guilty to the two charges, he did not know that he was giving up his right to a jury trial, to confront and cross-examine witnesses against him, or present witnesses on his own behalf. He said that he did not know that he had the right to testify or not testify, nor did he know that his convictions could be used against him to enhance the sentence for any subsequent offenses.

Prior to the two burglary charges, the Defendant apparently had juvenile convictions for burglary and larceny in 1972, and rape and burglary in 1976. The attorney who represented the Petitioner at the guilty plea hearing had previously represented him on another charge in 1978.

At the post-conviction hearing, the Petitioner's former counsel testified that he and the Petitioner had met on August 6 and August 13, 1979 to discuss the case. On August 14, 1979, the State made a plea offer which was rejected by the defense, and the case was set for trial. Mr. Reid testified that on that day he and the Petitioner discussed the strengths and weaknesses of the case. Mr. Reid testified that because fifteen years had passed, he could not recall specifically what was said. However, he

said that he believed the Petitioner understood the concept of a jury trial and that he would have discussed having twelve people in the jury box at trial, presenting witnesses for the defense, and the possibility of the Petitioner testifying. Mr. Reid said that it also would have been his practice to discuss what the State would have to prove in the case and what proof they had against the Petitioner.

Mr. Reid could not recall specifically stating that the Defendant had constitutional rights which included the right not to testify and the right to cross-examine his prosecuting witnesses.

Mr. Reid testified that the State submitted a second plea agreement which the Petitioner accepted. The agreement involved dropping two of the four charges against the Petitioner and requiring the Petitioner to serve one year in the county jail with the balance of the sentence suspended. On August 17, 1979, the Defendant entered two pleas of guilt to first degree burglary pursuant to this agreement. Mr. Reid testified that he and the Petitioner were satisfied with the agreement.

As part of entering the plea, the Petitioner signed waiver forms for each offense charged which included the guilty plea form, a waiver of jury trial form, and a form waiving his right to appeal. Reid testified at the post-conviction hearing that the waiver forms the Petitioner signed in 1979 did not contain a statement indicating that the Petitioner was giving up his right to self-incrimination and to confront witnesses, nor did it indicate that the State would have to prove first degree burglary beyond a reasonable doubt. However, Reid also testified that it would have been his customary practice to read the form with a client and to ask if the client had any questions about the procedure or the plea.

Mr. Reid testified that the Petitioner was very articulate at the time of the guilty plea hearings. He further testified that he would not have advised the Petitioner to take the plea if he thought that the Petitioner did not understand the rights he was forfeiting. Mr. Reid further opined that he believed that the Petitioner's pleas of guilt were entered freely, knowingly, and voluntarily.

At the post-conviction relief hearing, the Petitioner testified that he did not recall meeting with Mr. Reid prior to August 17, 1979, nor did he recall discussing a plea agreement with his counsel. He testified that in 1979 he did not know that a person could have a trial by jury. He also testified that he could not remember discussing with Mr. Reid the constitutional rights to which he was entitled. The Petitioner did not recall talking about whether he would testify, although he said "I wouldn't say that we didn't discuss it, but I don't recall a discussion of me testifying . . . ."

The Petitioner also said that he had no knowledge of the right to trial by jury, the right to testify, the right to call and cross-examine witnesses, or that the convictions could be used to enhance any other sentences subsequently charged. The Petitioner said that he probably did not know what he was being charged with in 1979 and that he could not remember who helped him commit the burglaries. He said that he was frightened by the courtroom proceedings and that he was afraid of going to the penitentiary. The Petitioner did not remember reading or signing the waiver forms connected with his plea.

Based on the Petitioner's testimony and the transcript of the guilty plea hearing, the Petitioner made out a prima facie case for post-conviction relief. The burden then shifted to the State to prove by clear and convincing evidence that the Petitioner was aware of his constitutional rights and that the plea was knowing and voluntary. If the State can show that the Petitioner pleaded guilty with an understanding of his

constitutional rights, then the Petitioner is not entitled to relief. Johnson, 834 S.W.2d at 922.

The State concedes that the transcript of the plea hearing does not affirmatively show that the Petitioner's plea was knowingly and voluntarily entered. However, the State argues that the testimony of the Petitioner and his former attorney at the post-conviction hearing provide clear and convincing evidence that the Petitioner understood his Boykin rights. The record shows that the Petitioner rejected the first plea agreement offered by the State and decided to proceed with a jury trial until the State offered a more acceptable deal. The Petitioner's former attorney testified that he discussed the strengths and weaknesses of the case, what the State would have to prove, what witnesses the defense would call, and whether the Petitioner would testify. The counsel said that he would not have allowed the Petitioner to proceed with a guilty plea if he did not believe the Petitioner understood the process and the rights he was relinquishing.

Moreover, the trial court at the post-conviction relief hearing doubted the veracity of the Petitioner and found him to be totally without credibility. In the memorandum supporting the judgment denying post-conviction relief, the trial court rejected the Petitioner's testimony, found that the Petitioner was fully aware of the rights he disavowed knowledge of, and found that the pleas were knowingly and voluntarily entered.[1]

Because the trial court's findings of fact are afforded the weight of a jury verdict, this court is bound by the trial court's findings unless the evidence contained in the

[1]The trial court found that the Petitioner might not have been aware that the guilty pleas could later be used to enhance the sentences for subsequent crimes. However, the failure to advise a defendant that a judgment of conviction could later be used to enhance does not by itself constitute a constitutional rights violation and does not warrant post-conviction relief. See Teague v. State, 789 S.W.2d 916 (Tenn. Crim. App. 1990).

record preponderates against those findings or the judgment entered. Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990). We conclude that the record does not preponderate against the trial court's findings and that the Petitioner knowingly and voluntarily entered the two guilty pleas to first degree burglary.

The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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DAVID G. HAYES, JUDGE

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JOHN A. TURNBULL, SPECIAL JUDGE