

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1996 SESSION

STATE OF TENNESSEE, * C.C.A. # 01C01-9505-CC-00143
Appellee, * PUTNAM COUNTY
VS. * Hon. Leon Burns, Jr., Judge
MICHAEL LEON CHAMBERS, * (Motion to Withdraw Guilty Plea)
Appellant. *

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(on motion and appeal)

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FILED

June 20, 1996

Cecil W. Crowson
Appellate Court Clerk

OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Michael Leon Chambers, entered a plea of guilt to theft over \$10,000.00. Thereafter, the trial court denied a motion to withdraw the plea. In this appeal, the defendant claims that his plea was neither knowingly nor voluntarily entered. We disagree and thus affirm the judgment of the trial court.

The indictment by the grand jury provided as follows:

[The defendant] did unlawfully and knowingly obtain or exercise control over property, to wit: (1) 1986 convertible Mercedes ... total ... value over ... ten thousand (10,000.00) Dollars, belonging to Fred Clemons and with intent to deprive the owner thereof and without the owner's effective consent....

Later, the defendant waived his right to a jury trial and pled guilty to the charge without the state having made any recommendation as to the sentence. The trial court denied the defendant's request for judicial diversion and imposed a Range I, five-year sentence. The defendant was ordered to serve nine months of the sentence in the county jail and was to be granted intensive probation for the remainder of his term.

After the sentencing hearing, the defendant employed new counsel who filed a motion to withdraw his guilty plea. The trial court denied the motion, ruling that (1) the defendant pled guilty to theft; (2) there was no duty to explain lesser included offenses; and (3) there was no manifest injustice by allowing the plea to stand. By subsequent order, the trial court held that the defendant had voluntarily, knowingly, and understandingly waived his rights, including those to trial by jury, and that there was an adequate factual basis for the plea.

Whether to grant a motion to withdraw a guilty plea rests within the sound discretion of the trial court. State v. Haynes, 696 S.W.2d 26, 29 (Tenn. Crim.

App. 1985). In order for us to reverse the trial court's decision, the defendant must demonstrate that the trial court abused its discretion in denying the motion. State v. Davis, 823 S.W.2d 217, 220 (Tenn. Crim. App. 1991). The withdrawal of a plea of guilty is governed by Tenn. R. Crim. P. 32(f). When the motion is filed after the imposition of sentence, as done here, the standard to be applied is whether there is "manifest injustice." Tenn. R. Crim. P. 32(f); see also State v. Davis, 823 S.W.2d at 219-20. Whether there has been "manifest injustice" is determined by the courts on a case by case basis. State v. James Howard Turner, No. 01C01-9404-CR-00122 (Tenn. Crim. App., at Nashville, Sept. 20, 1995), perm. to appeal denied, (Tenn. 1996)(for publication).

A trial court may permit the withdrawal of a plea of guilty to prevent "manifest injustice" when it is established that the plea was entered due to (a) "coercion, fraud, duress or mistake," (b) "fear," (c) a "gross misrepresentation" made by the district attorney general, or an assistant, (d) the district attorney general, or an assistant, withholds material, exculpatory evidence, which influences the entry of the plea, or the plea of guilty was not voluntarily, understandingly, or knowingly entered. Conversely, the trial court will not, as a general rule, permit the withdrawal of a plea of guilty to prevent "manifest injustice" when the basis of the relief is predicated upon (a) an accused's "change of heart," (b) the entry of the plea to avoid harsher punishment, or (c) an accused's dissatisfaction with the harsh punishment imposed by the trial court or a jury.

Id., slip op. at 12-13 (footnotes omitted). Our scope of review is limited. The findings of the trial judge on questions of fact are conclusive on appeal unless the evidence preponderates against the judgment. Clenny v. State, 576 S.W.2d 12 (Tenn. Crim. App. 1978).

The defendant argues that his guilty plea was not knowingly and voluntarily made because he was not properly advised of the nature of the charge. More specifically, he makes the following assertions:

(1) The theft of property statute, Tenn. Code Ann. § 39-

14-103, requires a permanent intent to deprive an owner of his property;

(2) because § 39-14-103 requires a permanent intent to deprive an owner of his property, the defendant was never apprised of the nature of the charges against him;

(3) because the defendant was never apprised of the nature of the charge against him, his guilty plea was involuntary and must be set aside;

(4) the trial court's failure to apprise the defendant of the nature of the charge against him and its failure to establish a factual basis for his plea constituted prejudicial error; and

(5) alternatively, the defendant's conviction should be reduced to joyriding and the case remanded to criminal court for proper sentencing.

We will attempt to adequately address each of these assertions.

Intent Required for Theft of Property

Theft of property occurs when, "with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103. If a person takes another's car without the owner's effective consent but does not have the intent to deprive the owner of the car, then the person has only committed the offense of joyriding. Tenn. Code Ann. § 39-14-107. Recently, in State v. Brooks, 909 S.W.2d 854, 859-60 (Tenn. Crim. App. 1995), this court addressed the different intent requirements for theft and joyriding and whether an intent to permanently deprive the owner of property is required under the theft statute. In making this determination, the court relied upon the statutory definition of "deprive":

(A) Withhold property from the owner permanently or for such a period of time as to substantially diminish the value or enjoyment of the property to the owner;

(B) Withhold property or cause it to be withheld for the purpose of restoring it only upon payment of a reward

or other compensation; or

(C) Dispose of property or use it or transfer any interest in it under circumstances that make its restoration unlikely[.]

Tenn. Code Ann. § 39-11-106(a)(8)(emphasis added). Under this statute, the intent to permanently deprive an owner of his property is only one of several alternative definitions of "deprive" which would satisfy the statutory definition for theft of property. If permanent deprivation was not applicable here, the defendant may have qualified under one or more of the other alternatives.

Nature of the Charge

"Adequate notice of the nature of the charges is a constitutional requisite in any criminal prosecution." Bryan v. State, 848 S.W.2d 72, 75 (Tenn. Crim. App. 1992); see also Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993); Tenn. R. Crim. P. 11. "[T]here is[, however,] no constitutional requirement that a trial court, in litany fashion, explain each element of every offense to which an accused is pleading guilty." Bryan v. State, 848 S.W.2d at 75. Here, the indictment followed the statutory definition of the offense. The mere fact that terms within that definition may also be statutorily defined elsewhere does not impose a duty on the trial judge at all guilty plea hearings to define each term and phrase as he would for a jury. In our view, the defendant was sufficiently advised that he was pleading guilty to the offense of theft of an automobile over \$10,000.00.

Voluntariness of Plea

In Boykin v. Alabama, 395 U.S. 238 (1969), the United States Supreme Court ruled that defendants should be advised of certain of their constitutional rights before entering pleas of guilt. Included among those required warnings are the right against self-incrimination, the right to confront witnesses, and

the right to a trial by jury. Id. at 243. The overriding Boykin requirement, however, is that the guilty plea must be knowingly and voluntarily made. Id. at 242-44. In State v. Mackey, 553 S.W.2d 337 (Tenn.1977), our supreme court established a procedure for trial courts to follow in accepting guilty pleas.

The petitioner asserts that he did not understand what was required to commit the offense and that he did not therefore voluntarily and knowingly enter his plea. We cannot agree.

The record contains an affidavit by the defendant wherein it is alleged that his prior counsel never advised him that a permanent intent to deprive is required to substantiate the offense. Another affidavit provides that his prior counsel acknowledged that he had not told the defendant of the permanency requirement. The record, however, establishes that the defendant acknowledged at the guilty plea hearing that he had, in fact, been fully advised by his counsel of the charges made. While the defendant made statements that he did not intend to damage the vehicle, the primary concern of the defendant at the submission hearing was in being treated similarly to a codefendant for whom the state had agreed to recommend judicial diversion. The state had, however, opposed judicial diversion for the defendant. The defendant may not now seek to withdraw his plea because he is unhappy with the sentence ultimately imposed. See Henning v. State, 184 Tenn. 508, 511-13, 201 S.W.2d 669, 670-71 (1947). There is no requirement for equal sentences among codefendants. Individual factors must be taken into consideration. None of these assertions would necessarily establish that the plea was not knowingly and voluntarily entered.

Factual Basis for Plea and Reduction to Joyriding

The defendant also claims that the record does not establish a factual basis for the plea. The state, however, provided the following summary at the submission hearing:

These individuals stole a, I believe it was a Mercedes that belonged to a Fred Clemons here in Putnam County. They took it, they took it out, left it, rode it around and eventually abandoned it down at Center Hill Lake or down below the dam, and just ruined the car basically, Your Honor, so that's what the crime is.

The defendant now attempts to argue that he did not have the requisite intent to commit the theft and therefore was guilty of joyriding at worst. While we agree that the defendant may have advanced this theory had the case gone to trial, this does not render as inadequate the factual basis for his plea. These stipulated facts are sufficient to establish the elements of the offense. That the defendant "just ruined the car" would, for example, qualify as a substantial diminution of "the value or enjoyment of the property." Tenn. Code Ann. § 39-11-106(a)(8)(A).

Thus, we agree that there was no manifest injustice which required that the guilty plea be set aside. Accordingly, the judgment is affirmed.

Gary R. Wade, Judge

CONCUR:

Paul G. Summers, Judge

Joseph M. Tipton, Judge