

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JULY SESSION, 1996

**FILED**  
September 30, 1996  
Cecil Crowson, Jr.  
Appellate Court Clerk

|                     |   |                                |
|---------------------|---|--------------------------------|
| REGINALD HILL,      | ) | C.C.A. NO. 02C01-9512-CR-00391 |
|                     | ) |                                |
| Appellant,          | ) |                                |
|                     | ) |                                |
|                     | ) | SHELBY COUNTY                  |
| VS.                 | ) |                                |
|                     | ) | HON. ARTHUR T. BENNETT         |
| STATE OF TENNESSEE, | ) | JUDGE                          |
|                     | ) |                                |
| Appellee.           | ) | (Post-Conviction)              |

ON APPEAL FROM THE JUDGMENT OF THE  
CRIMINAL COURT OF SHELBY COUNTY

FOR THE APPELLANT:

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OPINION FILED \_\_\_\_\_

AFFIRMED

DAVID H. WELLES, JUDGE

# OPINION

The Petitioner appeals pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure from the trial court's denial of his petition for post-conviction relief. The Petitioner is detained in the Tennessee Department of Correction for a life sentence as an habitual offender. The conviction in question is a burglary conviction which triggered the habitual offender conviction. The Petitioner appeals from the trial court's judgment that his guilty plea was properly entered. We affirm the judgment of the trial court.

The Petitioner was indicted for first degree burglary and being an habitual criminal. At trial, he repeatedly stated that he wanted to plead guilty. Although there was no formal agreement or a plea offer from the State, the trial judge allowed the Petitioner to plead guilty. At the end of the trial on the burglary charge and the habitual offender charge the jury foreman stated, "Upon the defendant's plea of guilty, we, the jury, find the defendant guilty of burglary in the first degree." The jury also found the Petitioner guilty of being an habitual offender, which was the second count. The Petitioner was unsuccessful in his appeal from his habitual offender conviction. State v. Reginald Hill, Shelby County, No. 27 (Tenn. Crim. App., Jackson, Feb. 1, 1989).

The Petitioner's issues are: (1) Whether he entered his guilty plea knowingly, voluntarily and intelligently; (2) whether he understood the consequences of the guilty plea to burglary on the other indicted offense of being

an habitual offender; and (3) whether the guilty plea was entered as the result of perceived threats and coercion.

A defendant must be advised of certain constitutional rights before he is allowed to enter a guilty plea. Boykin v. Alabama, 395 U.S. 238 (1969). Among those rights are the right against self-incrimination, the right to confront witnesses and the right to a trial by jury. Id. at 243. The record must show that a guilty plea was made voluntarily, understandingly, and knowingly. Id. at 242. In State v. Mackey, 553 S.W.2d 337 (Tenn. 1977), the Tennessee Supreme Court imposed stricter standards than those mandated in Boykin. Included in the Mackey requirements:

A. Before accepting a plea of guilty, the court must address the defendant personally in open court . . . .

. . . .

D. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty, the record shall include, without limitation, (a) the court's advice to the defendant, (b) the inquiry into the voluntariness of the plea including any plea agreement and into the defendant's understanding of the consequences of his entering a plea of guilty, and (c) the inquiry into the accuracy of a guilty plea.

Id. at 341.

In State v. Neal, 810 S.W.2d 131 (Tenn. 1991), our supreme court stated that the purpose for these guidelines is to "seek to insulate guilty pleas from coercion and relevant defendant ignorance. They are designed to insure that guilty pleas are voluntary and knowing." Id. at 135. The Tennessee Supreme Court has also stated:

For the plea to be acceptable it must be voluntary. That does not mean that the defendant would want to plead guilty if he or she had the option available to go free. The option available is to go to trial, with its uncertainties, or to plead guilty. The knowledge that is most relevant to this decision of the accused pertains to the rights that are available to him or her upon a trial that are given up by pleading guilty.

Id.

The Petitioner first argues that his guilty plea was not entered into knowingly, voluntarily and intelligently. The record from the Petitioner's guilty plea shows that the Petitioner was addressed personally in open court by the trial judge and was advised of all his constitutional rights. The Petitioner argues that his answers to the questions demonstrate that he was not entering into his plea knowingly, voluntarily and intelligently. However, after reviewing the record, the Petitioner's statements seem to stem more from a desire to be uncooperative than from not understanding. The transcript from the Petitioner's guilty plea begins with questioning by his attorney and then by the trial judge. It reads as follows:

BY THE DEFENSE COUNSEL: Mr. Hill, you're the defendant in this case; correct?

BY THE DEFENDANT: Yea.

BY THE DEFENSE COUNSEL: And you have informed me that it's your intention to plead guilty before the jury; is that correct?

BY THE DEFENDANT: I've been telling you that all week long.

BY THE DEFENSE COUNSEL: Your realize that you do have a right to a trial, and you have a right to cross-examine all the state's witnesses and hear their proof?

BY THE DEFENDANT: Man, I've been telling you I was guilty all the time. And I need me a lawyer, because you done lied to me.

BY THE DEFENSE COUNSEL: I understand that. We have to get this before the court. Is it my understanding that you

want to plead guilty before the jury to the charge of burglary in the first degree?

BY THE DEFENDANT: I've been telling you that all the time. I don't know why you keep punishing me, man.

BY THE DEFENSE COUNSEL: That's all I have, Your Honor.

BY THE COURT: Mr. Hill, the court must ask you certain questions, and I'll ask you respectfully to please respond.

BY THE DEFENDANT: You all go on and get on to what you all doing, man. Do what you want to do to me.

BY THE COURT: Do you understand, Mr. Hill, that you have a right to a trial by jury?

BY THE DEFENDANT: Man, if you all want to give me life that bad, just go ahead.

BY THE COURT: Yes or no; do you understand? Yes or no?

BY THE DEFENDANT: Yea, I know. Yea, I know. Yea, I know it.

BY THE COURT: Do you understand that you have a right to enter a plea of not guilty; you have a right to enter a plea of guilty; you have a right to enter a plea of nolo contendere?

BY THE DEFENDANT: I don't know. . .I don't know what all that stuff mean, and he won't tell me nothing. That's the reason you took him off my case, and I don't know how you put him back on it.

BY THE COURT: Do you know what not guilty means?

BY THE DEFENDANT: Not guilty. . .who said I was not guilty.

BY THE COURT: I said, "Do you know what not guilty means?"

BY THE DEFENDANT: Yea, I know what that means.

BY THE COURT: Do you know what guilty means?

BY THE DEFENDANT: Yea, I know what it means.

BY THE COURT: Nolo contendere is a plea that you may enter. . .nolo means no, and contendere means contest; and if you enter that type of plea you tell the jury and the trial judge that you do not contest the allegations contained in the indictment. Do you understand that?

BY THE DEFENDANT: I understand anything you want me to understand.

BY THE COURT: Well, now, I don't want you to understand anything except what you do understand.

BY THE DEFENDANT: Man, you all want to get this over with. I'm guilty. You want to. . .you're going to give me life. I'm guilty of anything.

BY THE COURT: Mr. Hill we've got to . . .

BY THE DEFENDANT: It's what you want to do.

BY THE COURT: Mr. Hill, please. . .please. Do you understand that you have a right to be represented by a lawyer at all stages of the proceedings including any appellate review stage.

BY THE DEFENDANT: I understand that I had a right for a lawyer that speaks the truth and don't lie and lead me on to thinking it's a conspiracy.

BY THE COURT: So you do understand you have a right to be represented by a lawyer?

BY THE DEFENDANT: Yea.

BY THE COURT: All right.

BY THE DEFENDANT: One that don't lie.

BY THE COURT: Do you understand that you have the right to cross-examine or confront all of the state's witnesses?

BY THE DEFENDANT: Man, I don't want to bother them people, man.

BY THE COURT: I understand that, but do you understand that you have that right?

BY THE DEFENDANT: I don't . . .

BY THE COURT: Sir?

BY THE DEFENDANT: Yea, I guess so.

BY THE COURT: Do you understand that you have a right to compel witnesses to attend on your behalf?

BY THE DEFENDANT: That's another thing. There ain't nobody made no effort . . .

BY THE COURT: Do you understand that you have that right?

BY THE DEFENDANT: I don't understand none of this stuff you're doing. That's the reason I said, "Go on and get it over with."

BY THE COURT: Do you understand in a jury trial. . . on a guilty plea or a plea of nolo contendere that you have a right to appeal any jury decision or judge sentencing decision?

BY THE DEFENDANT: I don't understand none of that, because I haven't been told it. I want to know every . . .

BY THE COURT: Well, I'm telling you now. Do you understand that?

BY THE DEFENDANT: No, I don't understand none of this stuff you're talking about.

BY THE COURT: Do you understand that you have a right to appeal, Mr. Hill?

BY THE DEFENDANT: I don't even know what appeal means.

BY THE COURT: How many times have you been tried in these criminal courts?

BY THE DEFENDANT: I've been tried one time.

BY THE COURT: Well, did you appeal your decision?

BY THE DEFENDANT: I don't think I did. I don't even know. Whatever it is; I don't know.

BY THE COURT: You understand that you do have a right to appeal; don't you?

BY THE DEFENDANT: I don't know what appeal means.

BY THE COURT: You have a right to file a motion for a new trial alleging any error that you might say was committed by this court in the trial before the jury. You have the right to assign

any type of error that you might say the reason why you didn't get a fair trial. Do you understand that?

BY THE DEFENDANT: I don't. . . I done told you I'm guilty.

BY THE COURT: I understand that, but I can't accept a guilty plea unless I know that you're intelligently and knowingly waiving your right to enter a not guilty plea.

BY THE DEFENDANT: I'm guilty, man; whatever you want.

BY THE COURT: Well, do you understand that when you enter a guilty plea that you lose your right to appeal any jury decision or judge sentencing decision?

BY THE DEFENDANT: I guess so.

BY THE COURT: You understand that right?

BY THE DEFENDANT: I guess so.

BY THE COURT: Well not a guess so; do you understand that you lose your right to . . .

BY THE DEFENDANT: There ain't nobody read it to me.

BY THE COURT: Mr. Hill, I'm telling you that under the law you lose your right to appeal when you enter a guilty plea. Do you understand that?

BY THE DEFENDANT: I don't. . . I don't understand what you're saying.

BY THE COURT: Do you understand English?

BY THE DEFENDANT: (Pause.) I'm talking English; I must understand.

BY THE COURT: Well, then you must understand that you lose. . . when I tell you that you lose your right to appeal when you enter a guilty plea, do you understand that?

BY THE DEFENDANT: I understand that. . . explain it to me.

BY THE COURT: Well, you just lose your right. I don't know how to explain it any better than that. You don't have a right to appeal.

BY THE DEFENDANT: I don't have a right to appeal?

BY THE COURT: That's right. You don't have a right to appeal when you enter a guilty plea.

BY THE DEFENDANT: Well, I'd rather represent myself.

BY THE COURT: Well, we're not on that question right now. We're on the question of whether or not you understand you lose your right to appeal when you enter a guilty plea.

BY THE DEFENDANT: I don't quite understand.

BY THE COURT: Do you understand "lose?"

BY THE DEFENDANT: No response.

BY THE COURT: If you lose something; do you know what it is?

BY THE DEFENDANT: Yea.

BY THE COURT: All right. You have a right to appeal on a jury trial if you enter a not guilty plea or if you enter a plea of nolo contendere. But when you enter a guilty plea, you lose your right to appeal.

BY THE DEFENDANT: I don't know what all them big words mean.

BY THE COURT: You know what the word "lose" means?

BY THE DEFENDANT: Yea, in certain situations I know what it means.

BY THE COURT: And you know what the word "right" means; don't you?

BY THE DEFENDANT: If you're talking about this right, no.

BY THE COURT: Do you know what the word "right" is; that you have a right to do this or right to do that or right to do whatever? Do you understand the word "right?"

BY THE DEFENDANT: I thought I had a right to use the bathroom a minute ago. I thought I had a right to do that, but the officer said I couldn't go.

BY THE COURT: in other words you understood the word "right;" didn't you?

BY THE DEFENDANT: According to, you know, there's all kind of right.

BY THE COURT: Well, the right to appeal; that's what we're talking about. . .the right to appeal. You lose that when you enter a plea of guilty. Do you understand that? Yes or no.

BY THE DEFENDANT: Ah, nope, I don't understand what you're saying.

BY THE STATE: Your Honor, might . . .

BY THE COURT: No, just a minute, Mr. Beasley.

BY THE DEFENDANT: I was trying to figure out why come I can't say nothing to the jury.

BY THE COURT: You can say what you want to the jury, but you're not . . .

BY THE DEFENDANT: You told the jury I was innocent. I ain't said nothing about I was innocent. I don't know where you got that from. You told the. . .you. . .

BY THE COURT: Mr. Hill, you can get up and tell the jury that you're guilty if you so desire; but I'm going to tell you this. . .this is what I want you to understand: When you get up and tell the jury that you're guilty, then you do not, under the law, have a right to appeal this trial. Do you understand that?

BY THE DEFENDANT: What. . .what I'm going to trial on?

BY THE COURT: Burglary in the first degree.

BY THE DEFENDANT: And that's all?

BY THE COURT: Well, at this point; yes.

BY THE DEFENDANT: Well, keep on, I'm listening.

BY THE COURT: Well, that's all I'm going to tell you.

BY THE DEFENDANT: Well, I don't . . .

BY THE COURT: At this time you're before the jury on a charge of burglary in the first degree, and if you get up and tell the jury that you're guilty of burglary in the first degree, you don't have a right to appeal that. If the jury comes back and says you're guilty, you don't have a right to appeal that. Do you understand that?



BY THE DEFENDANT: What will happen if they find me guilty?

BY THE COURT: Well, that's it. Then we'll have a sentencing hearing.

BY THE DEFENDANT: A sentencing hearing on just the burglary?

BY THE COURT: Well, first we'll have a hearing; then I'll reswear the jury and put on the trial where you're charge [sic] with being in status of habitual criminal. Now, you can plead guilty to that charge or not guilty to that charge. If you plead not guilty, you preserve your right to appeal. But if you plead guilty, you lose the right to appeal; the fact that you're in the status of habitual criminal. Do you understand that?

BY THE DEFENDANT: No, you're talking too fast. I'm not educated enough. You know, you're moving to [sic] fast for me. That's all I'm saying.

BY THE COURT: Tell me if I'm speaking too slow for you, now. When you plead guilty before the jury and the jury finds you guilty of burglary in the first degree. . . do you understand all that, now. . .I'm not speaking too fast.

BY THE DEFENDANT: The jury ain't got to find me guilty; I am guilty.

BY THE COURT: All right, then; but if the jury returns a verdict of guilty, then. . .

BY THE DEFENDANT: Something just ain't right here; I need me another lawyer.

BY THE COURT: That's been determined, Mr. Hill.

BY THE DEFENDANT: You're going to take back the same lawyer. . .you're going to give me back the same lawyer you took off of my case. . .the one. . .

BY THE COURT: You know you have the right under the law to hire your own lawyer; you have a right under the law to be represented by the Public Defender's Office; but you don't have a right to select you a lawyer when you're an indigent.

BY THE DEFENDANT: Well, can you. . .well, you. . .

BY THE COURT: We're not going to go into that, Mr. Hill.

BY THE DEFENDANT: Well, okay, then, if I can't talk, forget it.

BY THE COURT: You can talk, but you'll answer my questions.

BY THE DEFENDANT: I'm trying to answer.

BY THE COURT: All right. Do you understand that you're going to have a trial on burglary in the first degree? Do you understand that?

BY THE DEFENDANT: I guess so.

BY THE COURT: After that trial is over and concluded, and the jury returns a verdict, then we'll have a trial on the charge of being in the status of an habitual criminal. You can either plead guilty to it, or you can plead not guilty to it. If you plead guilty, you lose your right to appeal. If you plead not guilty,

then you preserve your right to appeal. Do you have any question about that?

BY THE DEFENDANT: I don't know what an habitual criminal is. Is that somebody to go out and kill?

BY THE COURT: Do you have any questions about the procedure?

BY THE DEFENDANT: I don't know what you're talking about. I'm trying to find out.

BY THE COURT: Well, has anybody threatened you in any way to cause you to plead guilty?

BY THE DEFENDANT: Yea, I've been threatened that I might be killed or anything.

BY THE COURT: Who threatened you that way?

BY THE DEFENDANT: He didn't threaten me. He told me I was messing with the wrong people. That's the reason I'm ready to plead guilty.

BY THE COURT: He threatened you that you were going to be killed. . .your lawyer said that you're going to be killed?

BY THE DEFENDANT: Well, I said he said it was a possibility that a conspiracy is going on, so I'm thinking that means getting killed and everything.

BY THE COURT: Well, . . .

BY THE DEFENDANT: So, I'm ready. . .you know, you all can give me the electric chair if it will satisfy you all, because the way he talk, you know.

BY THE COURT: Do you understand, Mr. Hill, . . . I'm not asking you what you're going to plead. . .

BY THE DEFENDANT: I'm telling you what my lawyer said. You asked me have I been threatened.

BY THE COURT: All right. You tell me what your lawyer. . .how your lawyer threatened you.

BY THE DEFENDANT: I said he told me that the people that's involved in this case. . .you know, they might do anything, you know.

BY THE COURT: What people did he say; and what did he say they might do?

BY THE DEFENDANT: he said they might do anything. That's the reason I. . .

BY THE COURT: What do you mean, "anything?" Did he say what "anything" was?

BY THE DEFENDANT: That's what. . .you get him up here and ask him.

BY THE COURT: No, you're going to tell me.

BY THE DEFENDANT: "Anything," that's what he said.

BY THE COURT: What does it mean?

BY THE DEFENDANT: It could mean anything.

BY THE COURT: What else. Is there anything else you want to tell me?

BY THE DEFENDANT: I need another lawyer.

BY THE COURT: Anything else you want to tell me?

BY THE DEFENDANT: Let me think for a minute. (Pause.) Let's see. (Pause.) Yea, what happened to my witnesses.

BY THE COURT: I said, "tell me," not "ask me."

BY THE DEFENDANT: All this shouting; I have a nervous problem, man.

BY THE COURT: Excuse me.

BY THE DEFENDANT: You're excused. Let me finish thinking.

BY THE COURT: Is there anything else you want to ask me. . .tell me. . .not ask me, tell me.

BY THE DEFENDANT: Thank you, Your Honor.

BY THE COURT: You're welcome. Anything else you want to tell me?

BY THE DEFENDANT: I'm thinking, Your Honor. (Pause.)

BY THE COURT: I'm telling you now.

BY THE DEFENDANT: I feel that my life is in danger. . .

BY THE COURT: Well, . . .

BY THE DEFENDANT: . . .right at this very moment in this courtroom.

BY THE COURT: What is there about this courtroom that causes you to believe that?

BY THE DEFENDANT: The things. . .the odd things that have been going on.

BY THE COURT: What odd things?

BY THE DEFENDANT: I've been seeing the wrong things going on.

BY THE COURT: What things?

BY THE DEFENDANT: I'd rather not say it, because it might. . .I believe it might incriminate me.

BY THE COURT: Incriminate you. . .how could you be charged with anything?

BY THE DEFENDANT: Just scared to say certain things.

BY THE COURT: All right. Mr. Hill, I'm going to allow you to do whatever you want to do. You can plead guilty, or you can plead not guilty. I would recommend that you plead not guilty so that you will not lose your right to appeal.

BY THE DEFENDANT: I don't want to appeal nothing; I'm guilty.

BY THE COURT: Very well, step down. You understand, though. . .just a minute. . .just a minute. You said you don't want to appeal; that you're guilty.

BY THE DEFENDANT: Right.

BY THE COURT: You do understand that you do have a right to appeal, though?

BY THE DEFENDANT: I guess so.

As evidenced by the transcript, the Petitioner was quite uncooperative throughout the trial judge's attempt to advise the Petitioner of his rights. The

Petitioner's argument that he actually did not understand these rights is simply not believable when his previous criminal history is considered. The Petitioner's criminal history begins in 1977. Between 1977 and 1984 the Petitioner was convicted of six crimes. Five of those convictions are from guilty pleas on the part of the Petitioner.

In April of 1983 the Petitioner was first indicted for being a habitual criminal. Apparently this charge was dropped when he pled guilty to his other charge at the time. In November of 1983, the Petitioner was again indicted for being a habitual criminal. This charge was again dropped when he pled guilty to his other charge. The indictment in the case sub judice occurred in October of 1987. Clearly with the case sub judice the Petitioner's luck ran out.

The fact that the Petitioner had a great deal of experience with the guilty plea procedure and that he had been indicted for being an habitual criminal on two previous occasions makes his argument of not understanding difficult to believe. His responses to the trial judge make it almost impossible to believe that the petitioner did not understand the process.

The testimony of the Petitioner's trial counsel at the post-conviction hearing also supports this conclusion:

Q. Now you indicated that Mr. Hill had indicated--advised you that he wanted to plead guilty and accept a fifteen year sentence?

A. Well, I think--what we said--I told him that in his range, I believe, at the time would have been Range Two, that the maximum sentence for burglary first would be fifteen years, and that perhaps I could talk the prosecutor into allowing him to plead to something along those lines rather than go ahead with a

habitual criminal trial, and he advised me that he would take fifteen years as a Range Two offender if the state would offer that. So I took that proposition to Mr. Beasley and to General Stanton.

Q. And they refused to accept that?

A. They refused to accept that.

Q. All right. Now, you indicated that you did advise him of his rights to plead guilty or to not plead guilty. I guess it's basically-- did you cover the right not to incriminate himself at trial?

A. Right

.....

Q. Now, after Mr. Hill had asked the Court to relieve you of representing him, was there any hostility between you and Mr. Hill in your opinion?

A. Mr. Hill--after Mr. Hill found out that they were going to take him to the habitual criminal phase, he was pretty hostile most of the time. He was understandably upset and rather difficult to deal with.

We conclude from both the trial transcript and the post-conviction transcript that the Petitioner wanted to plead guilty to the burglary charge. He made this plea voluntarily, understandingly, and knowingly.

Therefore, this issue is without merit.

It is also clear from the Petitioner's statements, his experience in the system of two prior habitual criminal indictments, and the post-conviction hearing testimony that he knew he was going to receive a life sentence and that he understood the consequences of the conviction in the case sub judice. He clearly understood that this conviction would lead to a conviction for being an habitual criminal and that such a conviction carries a life sentence.

Therefore, this issue has no merit.

As for the issue as to whether the plea was the result of coercion or threat, there is clearly no evidence to support such a conclusion. The Petitioner essentially begged at trial to be allowed to plead guilty. The trial court advised him to go to trial, but the Petitioner still wanted to plead guilty. When the Petitioner brought up the threats, he was unable or unwilling to be specific or give the trial judge any information about who was threatening him.

At the hearing on his petition for post-conviction relief, the Petitioner testified that his attorney told him that the Ku Klux Klan wanted to do something to him and that was the reason he pleaded guilty. The fact that the victim's daughter worked for the District Attorney's office at the time also was mentioned, but the Petitioner insisted that this fact had nothing to do with the threats he was speaking of. His trial attorney testified at the hearing and denied that he had passed on any threats to the Petitioner. He stated that he had had no discussion with the Ku Klux Klan and that he could not remember the Petitioner mentioning the Ku Klux Klan to him before the trial. He testified that he did tell the Petitioner about the victim's daughter. There is no evidence to support the Petitioner's argument concerning being threatened and coerced into pleading guilty. Therefore, this issue is without merit.

The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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CORNELIA A. CLARK, SPECIAL JUDGE