

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 1099

STATE OF LOUISIANA

VERSUS

JOSHUA J. THOMPSON

Judgment rendered December 23, 2008.



Appealed from the
21st Judicial District Court
in and for the Parish of Tangipahoa, Louisiana
Trial Court No. 108605
Honorable Wayne Ray Chutz, Judge

HON. SCOTT PERRILLOUX
DISTRICT ATTORNEY
RICHARD SCHWARTZ
ASSISTANT DISTRICT ATTORNEY
AMITE, LA

ATTORNEY FOR
STATE OF LOUISIANA

MICHAEL L. THIEL
AMITE, LA

ATTORNEY FOR
DEFFENDANT-APPELLANT
JOSHUA J. THOMPSON

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.



McDonald, J. concurs.

Hughes, J., dissents with reasons.

PETTIGREW, J.

The defendant, Joshua J. Thompson, was charged by bill of information with indecent behavior with a juvenile, a violation of La. R.S. 14:81. The defendant initially entered a plea of not guilty. Pursuant to a plea agreement with the State, the defendant later entered a "best interest" guilty plea at a **Boykin** hearing. The defendant was sentenced to five years imprisonment at hard labor. The defendant filed an application for postconviction relief and a memorandum in support thereof, wherein he challenged the validity of his conviction and requested an out-of-time appeal. The trial court denied the defendant's application. The defendant sought supervisory relief from this court, which was denied. **State v. Thompson**, 2006-2173 (La. App. 1 Cir. 12/28/06) (unpublished). The Louisiana Supreme Court granted the defendant's writ application and remanded the case to the trial court, ordering the trial court to grant the defendant an out-of-time appeal and to appoint appellate counsel. **State ex rel. Thompson v. State**, 2007-0245 (La. 1/11/08), 972 So.2d 1154. The defendant now appeals, assigning error to the trial court's failure to advise him of the sex offender registration requirements. For the following reasons, we affirm the conviction and sentence.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that his plea was given in violation of his due process rights. Citing **State v. Calhoun**, 96-0786 (La. 5/20/97), 694 So.2d 909 and **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), the defendant specifically claims that he did not understand the nature and the consequence of his guilty plea because he was not apprised of the sex offender notification requirements prior to entering his plea. The defendant contends that he would not have pled guilty to the instant offense but would have exercised his right to trial had he been apprised of the sex offender notification requirements.

A trial court may permit a guilty plea to be withdrawn at any time before sentence. La. Code Crim. P. art. 559A. Despite the language of Article 559A, a trial court retains authority even after sentencing to permit the withdrawal of a constitutionally infirm guilty plea. **State v. Lewis**, 421 So.2d 224, 226 (La. 1982).

A defendant convicted of indecent behavior with a juvenile must register as a sex offender under La. R.S. 15:542. The trial court is required to provide written notification of the registration requirements to any person "charged with a sex offense," and the notice must be included on any guilty plea forms. La. R.S. 15:543A.¹

The Louisiana Supreme Court, in **Calhoun**, interpreted La. R.S. 15:543A as requiring a district court to advise a defendant of the sex offender notification requirements prior to accepting a guilty plea. **Calhoun**, 96-0786 at 7, 694 So.2d at 913. The court further held that a district court's failure to timely notify a defendant of the registration requirements is a factor that "can" undercut the voluntary nature of a guilty plea. **Calhoun**, 96-0786 at 9 n.6, 694 So.2d at 914 n.6.

In **Calhoun**, the defendant entered a "best interest" guilty plea. Prior to sentencing, he filed a pro se motion to withdraw guilty plea based on the allegation of ineffective assistance of counsel. At the hearing, the motion was enlarged to include the court's failure to inform the defendant of the sex offender registration requirements. The trial court denied the motion to withdraw guilty plea. On appeal, this court affirmed the defendant's conviction and sentence, stating, "there undoubtedly is no mandate that the court inform the defendant of the [sex offender] registration and notification requirements ... as they are not part of the defendant's sentence." **State v. Calhoun**, 94-2567, pp. 6-7 (La. App. 1 Cir. 2/23/96), 669 So.2d 1351, 1356, reversed, 96-0786 (La. 5/20/97), 694 So.2d 909. The Louisiana Supreme Court reversed. However, the trial court's failure to advise the defendant of the sex offender notification requirements was not the sole factor cited by the supreme court in support of its decision to allow the defendant to withdraw his guilty plea. On the day before the guilty plea, defense counsel filed a motion to be relieved as counsel or, alternatively, for a continuance of the trial. In support of the motion, the attorney alleged he was not prepared for trial, had not determined what evidence the State planned to use, and had

¹ Pursuant to 2007 La. Acts No. 460, §2, La. R.S. 15:543A was amended to provide that the trial court is required to provide written notification of the registration requirements to any person "convicted of a sex offense and a criminal offense against a victim who is a minor."

not interviewed material witnesses. The attorney also said he was not "enthused" about representing the defendant because the defendant had paid less than three-fifths of the negotiated attorney's fee. The attorney counseled the defendant to enter "best interest" guilty pleas and told the defendant there was no hope for him at a trial. Throughout the proceedings, the defendant had been unwilling to admit to his guilt. Noting that the defendant had not been "properly advised of the likely outcome of a trial by an attorney who was well-versed in his case," the supreme court determined the plea was not entered intelligently. **Calhoun**, 96-0786 at 10-12, 694 So.2d at 914-15.

In finding that the plea was involuntary and that the trial court had abused its discretion when it denied the motion to withdraw, the supreme court considered the "totality of the circumstances" (the failure of the trial court to notify the defendant of the sex offender registration requirements, the lack of preparedness of the attorney when he advised the defendant it was in his best interest to plead guilty, and the fact the defendant steadfastly maintained his innocence). However, the court specifically stated it was not expressing an opinion as to whether the failure to timely notify a defendant of the registration requirements alone would require a trial court to permit withdrawal of a guilty plea. **Calhoun**, 96-0786 at 9 n.6, 694 So.2d at 914 n.6.

A thorough review of the record in this case reveals that the trial court did not comply with La. R.S. 15:543A. In exchange for the defendant's plea, the State recommended that the defendant's sentence run concurrently with the sentence on a prior conviction and agreed not to file a habitual offender bill of information. The defendant was informed of his **Boykin** rights, namely his constitutional privilege against self-incrimination, right to trial by jury, and right to confrontation of his accusers. The defendant stated that he understood those rights and that he wished to waive them. While the trial court's failure to notify the defendant of the sex offender registration requirements is a factor that, when coupled with other circumstances (as in **Calhoun**), can potentially undercut the voluntary nature of a guilty plea, we do not find that this error, alone, is sufficient to invalidate the defendant's guilty plea herein. The sole

assignment of error lacks merit. Accordingly, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 1099

STATE OF LOUISIANA

VERSUS

JOSHUA J. THOMPSON



HUGHES, J.,dissenting.

I respectfully dissent. A “best interest” plea is not an admission of guilt. I believe State v Calhoun should allow withdrawal of the plea given the lack of notice.