

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 0183

STATE OF LOUISIANA

VERSUS

KEVIN DEWAYNE YOUNG

Judgment Rendered: June 8, 2007

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On appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 09-05-0280

Honorable Leon A Cannizzaro, Jr., Judge Ad Hoc

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.



GUIDRY, J.

The defendant, Kevin Young, was charged by grand jury indictment with second-degree murder, a violation of La. R.S. 14:30.1. The defendant originally pled not guilty. The defendant later withdrew his not guilty plea and entered a plea of guilty to manslaughter, a violation of La. R.S. 14:31. The defendant was sentenced to thirty-five years imprisonment at hard labor. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, arguing that his guilty plea was not intelligently and knowingly made. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

The defendant entered a guilty plea to the responsive offense of manslaughter. The facts of the offense are not in the record.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court failed to ensure that his guilty plea was intelligent and knowing. The defendant contends that the elements of the offense, a disclosure of the State's burden of proof, or a factual basis for the plea do not appear in the record. The defendant further contends that the trial court failed to ascertain his educational background or capacity to understand. Finally, the defendant contends that he only had a layman's understanding of the offenses and was not able to gauge whether his actions constituted second-degree murder or manslaughter.

A trial court may permit the withdrawal of a guilty plea at any time before sentencing. La. C.Cr. P. art. 559(A). Based on the record before us, the defendant failed to file a motion to withdraw his guilty plea in the lower court. However, in State v. West, 97-1638, p. 2 (La. App. 1st Cir. 5/15/98), 713 So.2d 693, 695, a defendant failed to file a motion to withdraw his guilty plea and this court stated that "even when a formal motion to withdraw a guilty plea is not filed, the

Louisiana Supreme Court has held that a constitutionally infirm guilty plea may be set aside either by means of an appeal or post-conviction relief.” Thus, we will address the validity of the defendant’s guilty plea even though he has not filed a motion to withdraw his guilty plea.

Boykin v. Alabama, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969), requires the trial court to expressly enumerate three rights that must be waived by the accused prior to accepting a guilty plea. As spelled out by Boykin, these rights are to a jury trial, against self-incrimination, and to confront one’s accusers. Boykin only requires that a defendant be informed of the three rights enumerated above. The jurisprudence has been unwilling to extend the scope of Boykin to include advising the defendant of any other rights that he may have. State v. Hardeman, 2004-0760, p. 6 (La. App. 1st Cir. 2/18/05), 906 So.2d 616, 623. In State v. Guzman, 99-1528, 99-1753, p. 9 (La. 5/16/00), 769 So.2d 1158, 1164, the Louisiana Supreme Court stated that “[t]his Court has never extended the core Boykin constitutional requirements to include advice with respect to sentencing.”

Louisiana Code of Criminal Procedure article 556.1 provides, in pertinent part:¹

A. In a felony case, the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, all of the following:

- (1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.

* * *

¹ Guzman, 99-1528, 99-1753 at 10, 769 So.2d at 1164, held that violations of Article 556.1 that do not rise to the level of Boykin violations are subject to harmless-error analysis. The proper inquiry is whether the defendant’s knowledge and comprehension of the full and correct information would have likely affected his or her willingness to plead guilty. Guzman, 99-1528, 99-1753 at 11, 769 So.2d at 1165. The statute was later amended by 2001 La. Acts No., 243, § 1, to add the harmless-error provision in Section (E). See also La. C.Cr. P. art. 921.

E. Any variance from the procedures required by this Article which does not affect substantial rights of the accused shall not invalidate the plea.

The test for the validity of a guilty plea does not depend upon whether or not the trial court specifically informed the accused of every element of the offense. Rather, the defendant must establish that his lack of awareness of the elements resulted in his lack of awareness of the essential nature of the offense to which he was pleading. State v. Forrest, 2004-43, p. 4 (La. App. 5th Cir. 5/26/04), 876 So.2d 187, 189-190. Article 556.1's requirement that the defendant be informed of the nature of the charges to which he is pleading encompasses information regarding the elements of the crime and not a requirement that the trial court obtain a factual basis in support of the plea. When a guilty plea is otherwise voluntary, there is no necessity to ascertain a factual basis for the plea unless the accused protests his guilt or for some other reason the trial court is put on notice that there is a need for such inquiry. State v. Whiddon, 99-1, p. 7 (La. App. 3d Cir. 6/2/99), 741 So.2d 797, 802. In that event, due process requires a judicial finding of a significant factual basis for the defendant's plea. North Carolina v. Alford, 400 U.S. 25, 37-38, 91 S.Ct. 160, 167-168, 27 L.Ed.2d 162 (1970); State v. Linear, 600 So.2d 113, 115 (La. App. 2d Cir. 1992). However, the absence of a factual basis when entering a guilty plea does not render the plea constitutionally infirm, if the plea is determined to be made knowingly and intelligently. Whiddon, 99-1 at 7, 741 So.2d at 802.

Herein, the defendant concedes, and the record shows, that the trial court advised him of his constitutional rights as set forth in Boykin. Specifically, he was informed of his rights against self-incrimination, and his rights to a jury trial, and to confront his accusers. The defendant stated that he understood those rights and wished to waive them. The defendant responded positively when asked whether he wanted to plead guilty to the responsive offense of manslaughter. The trial court

informed the defendant of the maximum penalty for manslaughter. The defendant responded negatively when asked whether he had been forced, threatened, or intimidated in any way. When asked whether any promises had been made, the defendant stated “thirty-five years[,]” regarding the agreed-upon sentence. The defendant confirmed that there were no further promises. The defendant stated that he was satisfied with the legal representation by his attorney. The defendant responded positively when asked whether he was pleading guilty because he was in fact guilty. The trial court specifically asked the defendant if there was anything he wished to inform the court concerning himself or the case, and the defendant responded negatively.

Assuming for the purpose of argument that the trial court erred in advising the defendant, any such error was harmless. The defendant’s guilty plea was most assuredly based on reduced sentencing exposure, and reading the elements of the offenses likely would not have affected his willingness to so plead. While the record is devoid of a factual basis, there was nothing in the record that would have put the trial court on notice that there was a need for such an inquiry, as the evidence was sufficient to demonstrate that his plea was made knowingly and intelligently, thereby making a factual basis unnecessary. Moreover, there is no constitutional or statutory requirement that the trial court ascertain a defendant’s educational level before accepting a guilty plea. State v. Boles, 99-662, p. 6 (La. App. 5th Cir. 11/10/99), 750 So.2d 1059, 1061-1062. The record indicates that the defendant understood his constitutional rights and the ramifications of waiving them. At no time during the plea colloquy did the defendant ask questions or indicate that he did not understand the nature or elements of the offense to which he pled guilty. The defendant was aware of the maximum penalty for manslaughter, and the agreed-upon sentence of thirty-five years imprisonment was imposed. The defendant was originally charged with second-degree murder, an

offense punishable by life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. La. R.S. 14:30.1(B). Thus, the defendant's sentencing exposure was significantly lowered in pleading guilty to the responsive offense. The record reflects a knowing and voluntary waiver of defendant's rights and compliance with the constitutional requirements for the taking of voluntary guilty pleas. Therefore, we find no merit to the defendant's arguments pertaining to the validity of the guilty plea, and the plea will not be set aside. The sole assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.