

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

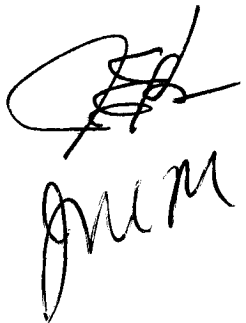
FIRST CIRCUIT

2009 KA 1228

STATE OF LOUISIANA

VERSUS

TONY E. MASSIE



Judgment Rendered: December 23, 2009

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
DOCKET NUMBER 444802, DIVISION "G"
STATE OF LOUISIANA

THE HONORABLE WILLIAM J. CRAIN, JUDGE

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BEFORE: PARRO, KUHN, AND McDONALD, JJ.

PARRO, J CONCURS

McDONALD, J.

The defendant, Tony E. Massie, was charged by bill of information with simple escape, a violation of La. R.S. 14:110. The defendant initially entered a plea of not guilty. The defendant later withdrew his plea and pled guilty as charged. The defendant was sentenced to five years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence to be served consecutively with any other sentence he was currently serving. After the state filed a habitual offender bill, the defendant was adjudicated a fourth-felony habitual offender.¹ The trial court vacated the original sentence and sentenced the defendant to forty years imprisonment. The defendant now appeals, challenging the validity of his guilty plea. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

STATEMENT OF FACTS

The defendant entered a guilty plea in the instant case and the facts were, therefore, not fully developed. According to the bill of information and **Boykin** transcript, on or about August 20, 2007, the defendant intentionally departed from the St. Tammany Parish jail in Covington.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the trial court erred in failing to require him to verbally enter a guilty plea before accepting his plea as valid. The defendant contends that while the transcript shows that he appeared to be ready to enter a guilty plea, the transcript does not contain a response from the

¹ The defendant's predicate convictions were set forth as follows: under the 22nd Judicial District Court Docket # 413841, for attempted simple robbery, a violation of La. R.S. 14:27 and La. R.S. 14:65; under Wayne County Court (Michigan) Docket # 90-3757, for unlawful driving away of an automobile, a violation of (Michigan Penal Code) § 750.413; under Wayne County Court Docket # 02-13897, for unlawful driving away of an automobile, a violation of (Michigan Penal Code) § 750.413; under Wayne County Court Docket # 02-13897, for third degree fleeing a police officer, a violation of (Michigan Penal Code) § 750.413(sic); under Wayne County Court Docket # 81-172538, for third degree criminal sexual conduct, a violation of (Michigan Penal Code) § 750.520; under Wayne County Court Docket # 83-379877, for "[b]reaking and [e]ntering with [i]ntent," a violation of (Michigan Penal Code) § 750.110.

defendant when the trial court asked him how he pled to the charge. The defendant concludes that the absence of a verbalization of intent to plead guilty renders the trial court's acceptance of the plea erroneous.

In a felony case, a verbatim record shall be made of the proceedings at which the defendant enters a plea of guilty or nolo contendere. La. Code Crim. P. art. 556.1D. **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 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 are the right to a jury trial, the right against self-incrimination, and the right to confront one's accusers. Once a defendant has been sentenced, a guilty plea may not be withdrawn unless the plea is found to be constitutionally infirm. **State v. Bell**, 2000-1084, p. 5 (La. App. 5th Cir. 2/28/01), 781 So.2d 843, 847, writ denied, 2001-0776 (La. 4/26/02), 813 So.2d 1098. A guilty plea is a conviction and, therefore, should be afforded a great measure of finality. **State v. Thornton**, 521 So.2d 598, 600 (La. App. 1st Cir.), writ denied, 530 So.2d 85 (La. 1988).

Here, the defendant did not file a motion to withdraw his guilty plea and has made no showing that his plea was anything other than free and voluntary. Including the defendant, there were two individuals entering pleas at the **Boykin** proceeding, and they were represented by separate counsel. At the commencement of the **Boykin** proceeding, the defendant stated that he had a General Equivalency Diploma and confirmed his ability to read, write, and understand English. The defendant agreed that he was sober, appearing of his own free will, and no one had coerced him. The defendant does not contest, and the record shows, that the trial court thoroughly advised him of his constitutional rights as set forth in **Boykin**. The defendant confirmed that he understood those rights and wished to waive them. The defendant confirmed that he had a discussion with his counsel as to what his sentence would be and that he was satisfied with his representation. The

defense counsel responded positively when asked if he felt that the defendant was knowingly, intelligently, and voluntarily withdrawing his guilty plea and tendering a plea of guilty.

The portion of the transcript where the trial judge specifically asked the defendant how he pleads contains a follow-up statement by the trial judge in lieu of a response by the defendant. The transcript appears as follows:

THE COURT:

Mr. Massie, how do you plead with reference to the simple escape charge?

MR. MASSIE:

Let the Record reflect that the Court feels that each of these defendants understand the nature of their respective crimes, a factual basis has been established. The pleas were freely and voluntarily made, therefore, I accept them.

* * *

Again, I am going to start with Mr. Massie. Let the Record reflect that Mr. Massie is present in Court with counsel. ... He has withdrawn his not guilty plea and entered a plea of guilty.

On appeal, the defendant cites **State v. Swanson**, 439 So.2d 646 (La. App. 1st Cir. 1983), in which this court held that the defendant therein did not enter a plea of guilty, and thus, it was error for the trial judge to consider the defendant's other statement admitting criminal activity as a guilty plea. In that case, the **Boykin** transcript contains the following response by the defendant when asked if he was pleading guilty and again when asked if he was guilty: "No sir." **Swanson**, 439 So.2d at 649. This case is highly distinguishable. It is apparent that the transcript here is in error in that it is devoid of a response by the defendant, particularly following the trial court's question as to how the defendant was pleading. Nonetheless, the trial court repeatedly stated for the record that the defendant entered a guilty plea. The defendant did not object to the trial court's express acceptance of his guilty plea.

We find that the record reflects a knowing and voluntary waiver of the defendant's rights and compliance with the constitutional requirements for the taking of voluntary guilty pleas. Based on the **Boykin** transcript in its entirety, the defendant, while represented by counsel, knowingly and intelligently waived his rights. 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.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.