

STATE OF LOUISIANA \* NO. 2018-KA-0432  
VERSUS \* COURT OF APPEAL  
DESMOND C. PARKER \* FOURTH CIRCUIT  
\* STATE OF LOUISIANA

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**CONSOLIDATED WITH:**

STATE OF LOUISIANA

VERSUS

DESMOND C. PARKER

**CONSOLIDATED WITH:**

STATE OF LOUISIANA

VERSUS

DESMOND C. PARKER

**CONSOLIDATED WITH:**

NO. 2016-K-1166

**CONSOLIDATED WITH:**

NO. 2017-KA-0141

**LOBRANO, J., CONCURS IN PART, DISSENTS IN PART, AND ASSIGNS REASONS.**

I respectfully concur in the majority’s opinion affirming Defendant’s convictions. However, I part ways with the majority in that I would grant the State’s writ application and find Defendant a fourth felony offender.

The State filed two multiple bills against Defendant. The first multiple bill was filed on June 3, 2015 in case no. 523-182, charging Defendant as a fourth felony offender based on his May 19, 2015, conviction for tampering with an electric monitor in Orleans Parish Criminal District Court with alleged prior convictions: (1) a conviction on July 25, 2005, in Jefferson County, Alabama, for third degree burglary (case no. 2005-2611); (2) a conviction on April 28, 2011, in Jefferson Parish Louisiana, for attempted simple escape and simple criminal damage (case no. 2009-3142); and (3) a conviction on June 4, 2010, for second degree robbery in Orleans Parish Criminal District Court (case no. 491-945). The

second multiple bill, filed September 22, 2016, charged Defendant as a fourth felony offender based upon the January 25, 2016, convictions for simple robbery and intimidating a witness, which are the subjects of the present appeal, in addition to the convictions outlined above.

After a September 22, 2016, combined hearing on the multiple bills, the court adjudged Defendant a third, rather than fourth, felony offender, finding that the State failed to prove that Defendant's guilty plea in Alabama case was in compliance with *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

To obtain a multiple offender conviction, the State is required to establish both the prior felony conviction and that Defendant is the same person convicted of that felony. *State v. Payton*, 00-2899, p. 6 (La. 3/15/02), 810 So.2d 1127, 1130. Various methods are available to prove that Defendant is the same person convicted of the prior felony offense: testimony from witnesses, expert opinion regarding the fingerprints of Defendant when compared with those in the prior record, or photographs in the duly authenticated record. *State v. Wolfe*, 99-0389, pp. 4-5 (La. App. 4 Cir. 4/19/00), 761 So.2d 596, 599-600. The Supreme Court adopted a scheme for burdens of proof in habitual offender proceedings in *State v. Shelton*, 621 So.2d 769, 779-80 (La. 1993), which it summarized as follows:

If the Defendant denies the allegations of the bill of information, the burden is on the State to prove the existence of the prior guilty pleas and that Defendant was represented by counsel when they were taken. If the State meets this burden, the Defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the Defendant is able to do this, then the burden of proving the constitutionality of the plea shifts to the State. The State will meet its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, one which reflects a colloquy between judge and Defendant wherein the Defendant was informed of and specifically waived his right to trial by jury, his privilege against self incrimination, and his right

to confront his accusers. If the State introduces anything less than a “perfect” transcript, for example, a guilty plea form, a minute entry, an “imperfect” transcript, or any combination thereof, the judge then must weigh the evidence submitted by the Defendant and by the State to determine whether the State has met its burden of proving that Defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three *Boykin* rights.

At the multiple bill hearing, the State introduced the testimony of Officer George Jackson, a certified latent print examiner, who testified that he had taken Defendant's fingerprints earlier in the proceedings. Jackson identified State's exhibit 1 as the card containing those fingerprints. Further, Jackson identified State's exhibit 2 as the pen pack pertaining to Defendant's guilty plea to burglary and assault in Alabama bearing case no. 2005-02611. Included in the pen pack was a certified copy of Defendant's fingerprints, which Jackson testified matched the fingerprints on State's exhibit 1. Jackson identified other documents in the Alabama pen pack as an Alabama Judicial Information System Case Action Summary, State's exhibit 3, evidencing Defendant's guilty plea and attesting to Defendant's waiver of rights incident to that guilty plea.

Defense counsel objected to the legal sufficiency of the Alabama plea because the document was not certified/notarized; did not contain a valid waiver of rights in the absence of specific mention of which rights were read to him; and contained an incomplete *Boykin* form, which resulted in insufficient proof that Defendant knowingly and intelligently entered the guilty plea.<sup>1</sup>

After examining the guilty plea and entertaining argument from the State and defense, the district court agreed with defense counsel. The district court concluded that because “there [wa]s no plea form in th[e] record,” only “a form

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<sup>1</sup> The validity of a guilty plea turns on whether Defendant was informed of three fundamental constitutional rights: 1) his privilege against compulsory self-incrimination, 2) his right to trial by jury, and 3) his right to confront his accusers. Further, the record must show that after being informed of these rights, the Defendant knowingly and voluntarily waived them. *State v. Granier*, 15-0608 (La. App. 4 Cir. 10/28/15), 178 So. 3d 1106, 1108.

that [wa]s filled out by the judge,” the State was required to produce a transcript of the *Boykin* colloquy, which the State did not do.

After examining Defendant’s Alabama guilty plea, I find that the district court erred when it refused to find that a valid plea had been proven by the State and adjudge Defendant a fourth felony offender.

Contained in the Alabama pen pack is a plea form signed by Defendant, his attorney, and the court, on July 25, 2005. The plea form was apparently on legal-sized paper in its original state, but was copied on letter-sized paper. It advises Defendant of all his rights and that by pleading guilty, he waived those rights. Defendant was represented by counsel during all of his court appearances. The entire pen pack is certified by its legal custodian, the Director of Central Records for the State of Alabama Department of Corrections. In addition, the Director’s signature is notarized.

I find that the Alabama pen pack more than satisfies the requirements of Louisiana law proving that Defendant was advised of his rights and knowingly and intelligently entered the guilty plea. My finding is supported by many cases from this court. *See State v. Golden*, 13-0012 (La.App. 4 Cir. 10/30/13), 126 So.3d 829; *State v. Henry*, 12-1093 (La.App. 4 Cir. 9/4/13), 124 So.3d 1108; *State v. Weaver*, 99-2177 (La.App. 4 Cir. 12/6/00), 775 So.2d 613; *State v. Stanfield*, 13-1193 (La.App. 4 Cir. 3/26/14), 137 So.3d 788; *State v. Taylor*, 12-0114 (La.App. 4 Cir. 11/28/12), 104 So.3d 679; *State v. Sims*, 13-0177 (La.App. 4 Cir. 8/28/13), 123 So.3d 806; and *State v. Tatten*, 12-0443 (La.App. 4 Cir. 5/1/13), 118 So.3d 843. The district court erred by failing to so.

Thus, I agree with the majority in affirming Defendant’s convictions but would grant the State’s writ, find Defendant a fourth felony offender, and remand the matter to the district court for resentencing.