

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: May 23, 2016]

CHARLES ADRIAN

:

V.

:

C.A. No. PM 14-1676

:

STATE OF RHODE ISLAND

:

:

DECISION

PROCACCINI, J. This matter came to be heard on September 22, 2015 and March 18, 2016 before, the Superior Court, Procaccini, J., on Charles Adrian’s Application for Post-Conviction Relief pursuant to G.L. 1956 § 10-9.1-8.

I

Facts and Travel

Charles Adrian (Petitioner or Mr. Adrian) was charged with one count of unlawful delivery of a controlled substance in violation of G.L. 1956 § 21-28-4.01(A)(2)(a) for delivering heroin to Paul Sylvia on or about September 27, 2002 in Cranston, Rhode Island. On June 4, 2003, Mr. Adrian entered a plea of nolo contendere, ultimately receiving a five-year suspended sentence. Mr. Adrian was represented by Attorney Emili Vaziri (Attorney Vaziri) throughout the pre-trial process and the plea colloquy.

On March 31, 2014, Mr. Adrian filed the present application for post-conviction relief (the Application) pursuant to § 10-9.1-8, essentially alleging that his plea colloquy failed to satisfy the requirements of Rule 11 of the Superior Court Rules of Criminal Procedure. First, Mr. Adrian argues that he did not actually enter a plea of nolo contendere because neither Mr.

Adrian nor his attorney actually said “nolo contendere.”¹ Second, Mr. Adrian claims that he was not adequately apprised of the nature of the charges against him and the consequences of his plea. More pointedly, Mr. Adrian posits that the colloquy failed to establish that he was forfeiting certain constitutional rights as a result of his plea, namely his right to assistance of counsel under the Sixth Amendment. As a result, he maintains that he did not enter his plea voluntarily and knowingly. Finally, Mr. Adrian contends that his plea was not supported by a sufficient factual basis. In response, the State argues that there is sufficient evidence to support a conclusion that Mr. Adrian understood the nature of the charge and the consequences of his plea. The State additionally maintains that there was a sufficient factual basis to support the plea. The Court conducted a hearing on the Application on September 22, 2015, Mr. Adrian appearing by video, and March 8, 2016.

II

Standard of Review

Rhode Island General Laws § 10-9.1-1 creates a statutory remedy for post-conviction relief that is “available to any person who has been convicted of a crime and who thereafter alleges either that the conviction violated the applicant’s constitutional rights or that the existence of newly discovered material facts requires vacation of the conviction in the interest of justice.” DeCiantis v. State, 24 A.3d 557, 569 (R.I. 2011). The statute reads, in pertinent part:

“10-9.1-1. Remedy--To whom available--Conditions.

¹ The Court does not devote much discussion to this argument as Petitioner has failed to cite any statute or case law which indicates that a defendant must actually utter the words of his plea. Petitioner signed a plea form, engaged in a plea colloquy, responded affirmatively when asked to confirm the prosecutor’s factual basis, and stated that he had nothing further he wished to say. See generally Plea Hr’g, June 4, 2003. Likewise, although not hesitant to inquire about his car and return of bail, Petitioner did not object when the Court ultimately accepted his plea of nolo contendere. Id. at 4:21-5:6.

“(a) Any person who has been convicted of, or sentenced for, a crime, a violation of law, or a violation of probationary or deferred sentence status and who claims:

“(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state; . . .

“may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

“(b) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction of the sentence. It shall be used exclusively in place of them.” Sec. 10-9.1-1.

An applicant for post-conviction relief bears “the burden of proving, by a preponderance of the evidence that [post-conviction] relief is warranted” in his or her case. Anderson v. State, 45 A.3d 594, 601 (R.I. 2012).

III

Analysis

In Rhode Island, a plea of nolo contendere is treated the same as a guilty plea. See Camacho v. State, 58 A.3d 182, 186 (R.I. 2013). “A defendant entering such a plea ‘waives several federal constitutional rights and consents to judgment of the court.’” State v. Feng, 421 A.2d 1258, 1266 (R.I. 1980) (quoting Johnson v. Mullen, 120 R.I. 701, 706, 390 A.2d 909, 912 (1978)). As a result, the Court must determine whether a plea of nolo contendere is both voluntary and intelligent. See Moniz v. State, 933 A.2d 691, 695 (R.I. 2007). Rule 11 of the Superior Court Rules of Criminal Procedure (Rule 11) outlines the procedure that a trial justice must follow to ensure that the constitutional requirements are met. See Camacho, 58 A.3d at

186. Rule 11 states that the Superior Court “shall not accept . . . a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea.”

During the plea colloquy, the Superior Court “must engage the defendant in an extensive inquiry.” Moniz, 933 A.2d at 695. To be sure, Rule 11 does not require that the trial justice divulge into an element by element explanation of the charges, as the Rule is not intended to “serve as a trap for those justices who fail to enumerate each fact relied on to accept such a plea.” State v. Frazar, 822 A.2d 931, 936 (R.I. 2003); see also Camacho, 58 A.3d at 186. Instead, all that is required is that, based on a totality, see Camacho, 58 A.3d at 186-87, “at the conclusion of the plea hearing, the trial justice should be able to say with assurance that the accused is fully aware of the nature of the charge and the consequences of the plea,” State v. Williams, 122 R.I. 32, 40, 404 A.2d 814, 819 (1979).

Petitioner argues that the plea hearing transcript is devoid of any detailed dialogue regarding the nature of Petitioner’s charge and the consequences of pleading nolo contendere. A review of the transcript reveals that the trial justice inquired into the Petitioner’s cognitive ability to enter his plea. Plea Hr’g, 1:16-24, June 4, 2003 (Plea Hr’g). Specifically, the trial justice asked the Petitioner whether he was under the influence of drugs or alcohol, his highest level of education, and whether he could read and write in English. Id. Further, Petitioner confirmed that he was able to read along while his attorney reviewed his plea form. Id. at 1:20-21. There is no indication that Petitioner acted involuntarily.

A review of the record indicates that Petitioner was adequately apprised of the nature of his charge. Petitioner’s colloquy is extremely similar to the plea colloquy reviewed in Camacho, 58 A.3d at 187-89, where the Supreme Court held that the petitioner was adequately apprised of

the nature of the charges against him and consequences of his plea. Petitioner's attempt to distinguish his case from Camacho is unavailing. Petitioner claims that the Court in Camacho "relied heavily" on the fact that the petitioner signed a plea form that was explained by his attorney. Pet'r's Mem. at 3. However, here, Petitioner also signed a plea form, and the trial justice specifically inquired into whether the form was reviewed with Petitioner by his attorney. Plea Hr'g at 1:10-15. Petitioner asserted that he was satisfied with his representation. Id. at 4:13-15. Likewise, the prosecutor detailed, albeit briefly, the charge when describing what the State would have proven at trial. Id. at 4:3-7. Petitioner affirmed these facts and stated that he did not have anything further to say. Id. at 4:8-12. Finally, the nature of the charge, "delivery," is straightforward and easy to comprehend: unlawful delivery of a controlled substance made by the defendant. See State v. Oliveira, 882 A.2d 1097, 1112-13 (R.I. 2005). Compare with Feng, 421 A.2d at 1270-71 (possession of a controlled substance with elements of knowledge and intent). Considering the totality of the circumstances, Petitioner was adequately aware of the nature of the charge against him.

Likewise, Petitioner was adequately informed of the consequences of his plea, as the trial justice specifically enumerated and concisely explained the constitutional rights that Petitioner was waiving. Id. at 1:25-3:4. Petitioner was also informed of the proposed disposition and risk of deportation if he was an alien. Id. at 3:5-11. Petitioner claims that he was not apprised of his right to assistance of counsel under the Sixth Amendment. Petitioner continues that he was indigent in June 2003 and under the impression that he could not afford to pursue the case to trial. As a result, Petitioner contends that he did not voluntarily and knowingly waive his right to assistance of counsel.

The Court does not find the waiver analysis in State v. Thornton, 800 A.2d 1016 (R.I. 2002), cited by Petitioner, applicable to the facts of this case. At no time during the Petitioner's case did he explicitly waive his right to assistance of counsel. In fact, Petitioner was represented during all proceedings, including his plea colloquy, by Attorney Vaziri. Furthermore, federal courts have routinely held that failing to inform a defendant of his Sixth Amendment right to assistance of counsel is not a fatal error when the defendant is already represented by counsel. See, e.g., United States v. Gomez-Cuevas, 917 F.2d 1521, 1526 (10th Cir. 1990); United States v. Lovett, 844 F.2d 487, 491 (7th Cir. 1988); United States v. Caston, 615 F.2d 1111, 1113-15 (5th Cir. 1980). This is so even though the parallel federal rule specifically enumerates the right to assistance of counsel as a constitutional right that the trial justice must address during the plea colloquy. See Fed. R. Crim. P. 11(b)(1)(D). Additionally, even if Attorney Vaziri's presence at the plea colloquy alone was not enough, it appears to the Court that Petitioner appeared in court for criminal matters at least twice prior to his plea colloquy, both at which he was apprised of his right to have counsel present. See Lovett, 844 F.2d at 492 (“[T]here is no suggestion in the record that Lovett did not know about his right to counsel at trial . . . through his own extensive experience as a criminal defendant.”). In sum, to the extent that the trial justice was required to inform Petitioner of his right to assistance of counsel during the plea colloquy, this Court finds the error harmless in light of the above. The trial justice was required to find that Petitioner voluntarily entered his plea with an understanding of the nature of the charge and consequences of the plea based on a totality of the circumstances. See Rule 11; Camacho, 58 A.2d at 186-87. Based on the above, Petitioner has failed to convince this Court that his plea was entered without his understanding of the nature of the charge and consequences of his plea.

This Court is also not convinced that the plea was not supported by a sufficient factual basis, as required by Rule 11. In Feng, 421 A.2d at 1269, the Supreme Court recognized that “the trial court may rely on any of several sources to establish the factual basis” of the defendant’s plea. There, the Supreme Court found a sufficient factual basis for the defendant’s plea based on the defendant’s affidavit, stating that he was admitting certain facts to substantiate the charges in the indictment, and his assent to a general query² by the trial justice. Id. at 1271. Likewise, in Moniz, 933 A.2d at 695-96, the Supreme Court found a sufficient factual basis in the prosecutor’s straightforward description of what the State would have proven if the matter proceeded to trial.³ Here, Petitioner signed a plea form and attested that he reviewed such with his attorney. See Feng, 421 A.2d at 1269-71. In addition, the State specified that “[h]ad this matter proceeded to trial, the State would prove beyond a reasonable doubt that Charlie Adrian on September 12th, 2002, in the City of Cranston, did unlawfully deliver heroin to Paul Sylvia in violation of the General Laws.” Plea Hr’g at 4:3-7. Compare with n.3. Petitioner attested that these facts were true. Plea Hr’g at 4:8-9. Consequently, this Court finds that the trial justice was provided with the factual basis for the charge to accept Petitioner’s plea.

IV

Conclusion

For the foregoing reasons, this Court denies Petitioner’s application for post-conviction relief. Petitioner was informed of the charge against him by his attorney when reviewing the plea form and, again, by the prosecutor when detailing the factual basis. Likewise, Petitioner

² The trial justice asked: “[D]o you consider that the State has a capability of submitting sufficient facts to a jury to convict you on every one of the counts?” Feng, 421 A.2d at 1271.

³ The prosecutor stated: “[I]f that matter were to proceed to trial, your Honor, the State would prove that on 30 November 1996 in Bristol that Mr. Moniz did unlawfully possess with an intent to deliver a controlled substance; that substance being marijuana.” Moniz, 933 A.2d at 695.

was adequately aware of the consequences of his plea, including his Sixth Amendment right to assistance of counsel. Finally, the plea was sufficiently supported by a factual basis.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Charles Adrian v. State of Rhode Island

CASE NO: PM 2014-1676

COURT: Providence County Superior Court

DATE DECISION FILED: May 23, 2016

JUSTICE/MAGISTRATE: Procaccini, J.

ATTORNEYS:

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