In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00376-CR

ROUDY DINK HENDERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 9th District Court
Montgomery County, Texas
Trial Cause No. 07-10-10864 CR

MEMORANDUM OPINION

Roudy Dink Henderson pleaded guilty to the offense of aggravated assault with a deadly weapon. He subsequently retracted the guilty plea, and the trial court set aside his bond. The court apparently set a new bond after a few weeks, and Henderson pleaded guilty again approximately five and one-half months later. The trial court found Henderson guilty as charged.

At the sentencing hearing, witnesses testified they saw Henderson shoot a rifle at a truck while he was hanging out of the rear window of a car. The trial court sentenced Henderson to five years in prison.

Henderson asserts in this Court that his guilty plea was involuntary, because the trial court set aside his bond when he withdrew his initial plea of guilty. Henderson notes that the power to require bail is not to be used as "an instrument of oppression." TEX. CODE CRIM. PROC. ANN. art. 17.15 (Vernon 2005).

At the hearing when he withdrew his initial guilty plea, trial counsel informed the court of a statement by Henderson in the pre-sentence report indicating he was not guilty. The following exchange then occurred:

> The Court: Bring up Mr. Henderson. All right, Mr. Henderson. You previously pled guilty to aggravated assault with a deadly weapon.
>
> The Defendant: Yes, sir.
>
> The Court: I was informed through the PSI that you now take the position that you're not guilty of that offense and your attorney has come to me and said that you are now taking the position that you're not guilty of that offense. Is that correct?
>
> The Defendant: Yes, sir.
>
> The Court: All right. We'll set it for trial for February the 2nd. We've set aside your bond. Take him into custody. He will remain in custody until trial.
>
> [Defense counsel]: Judge, may I make an argument to the Court?

> The Court: No. This is playing games with the Court, it's playing games with me, and I'm not going to tolerate it. You're going to go to trial, and you're going into custody.

The trial court's action in revoking appellant's bond is similar to the error noted by the Court in *Kniatt v. State*, 206 S.W.3d 657 (Tex. Crim. App. 2006). In that case the trial court ruled as follows:

> As I understand from the attorneys, they thought they had a plea agreement. In fact, they did have a plea agreement, and today the defendant has reneged on that, doesn't want the agreement. I've also been informed he wants to fire his lawyer. All that's ok with me. I'll take all this up. Defendant's bond is revoked. He's going to jail pending trial. Have a seat over there, sir. We'll set your trial when we get around to it.

Id. at 659. In *Kniatt*, the Court of Criminal Appeals noted that "[t]he trial court's revocation of appellant's bond was plainly unlawful." *Id*. at 659 n.1.

Similarly, Henderson sought to change his plea; the trial court immediately revoked his bond as a consequence, and Henderson was told he would stay in jail until trial. Texas judges do not have a general power to "revoke bail and regard the revocation as rendering a defendant nonbailable." *Id*. The trial court apparently reconsidered his "nonbailable" ruling. The docket sheet reflects that twenty-two days after the hearing setting aside the bond, the court set bond in the amount of $10,000.

The issue presented in this appeal is whether the subsequent guilty plea was voluntarily made. The record reflects that at the guilty plea hearing more than five months later, Henderson's attorney stated as follows:

> After a chance to review all the evidence -- this will come up in the punishment hearing, so I don't think I'm speaking out of line. The defendant's voluntary intoxication played a significant role in the offense; and once we gathered all the evidence from the independent sources, it became abundantly clear that we need to reiterate our guilty plea.

Henderson told the trial court he was pleading guilty of his own free will because he was guilty. He stipulated that, while exhibiting a deadly weapon, he intentionally or knowingly threatened imminent bodily injury to the complainant. At the punishment hearing, defense counsel argued in part that "[Henderson's] been on bond for two years and has managed to keep his nose clean during that time without the supervision." The trial court also noted in sentencing that "the only thing that is in your favor -- and I think [defense counsel] expressed it very well -- is the fact that this hanging over your head the last two years, you have walked the straight and narrow out of fear, I'm sure, knowing that if you got anything, that you'd get 20 years." It appears from the record that Henderson was out of jail on bond, except for the limited time following his initial withdrawal of his guilty plea.

A guilty plea "must be entered knowingly, intelligently, and voluntarily." *Kniatt*, 206 S.W.3d at 664. "To be 'voluntary,' a guilty plea must be the expression of the defendant's own free will and must not be induced by threats, misrepresentations, or improper promises." *See id.* (citing *Brady v. United States*, 397 U.S. 742, 755, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)); *see also Davis v. State*, 686 S.W.2d 287, 289-90 (Tex. App.--Houston [14th Dist.] 1985, no pet.). Henderson's attorney explained at the hearing

that "it became abundantly clear" after a review of "all the evidence" from "independent sources" that "we need to reiterate our guilty plea." The record reflects that the defendant's decision to re-assert his guilty plea was an expression of his own free will. We conclude the plea of guilty was voluntary and was not induced by the prior bail revocation.

Appellant's sole issue is overruled. The judgment is affirmed.

AFFIRMED.

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DAVID GAULTNEY
Justice

Submitted on April 14, 2010
Opinion Delivered May 26, 2010
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Before McKeithen, C.J., Gaultney and Horton, JJ.