

In the Supreme Court of Georgia

Decided: January 24, 2010

S10A1465. WILSON v. KEMP.

HUNSTEIN, Chief Justice.

We granted Milton Wilson a certificate of probable cause to appeal the denial of his petition for habeas corpus in which he challenged the validity of his guilty plea on the basis, inter alia, that it was not entered voluntarily. We reverse because the plea hearing transcript shows that Wilson was not informed that a guilty plea waives his privilege against compulsory self-incrimination. See Boykin v. Alabama, 395 U.S. 238 (89 SC 1709, 23 LE2d 274) (1969).

Wilson pled guilty to voluntary manslaughter at a mass guilty plea hearing on February 7, 2005. The transcript of the plea hearing reveals that Wilson, along with nearly 20 other defendants, heard the trial court initiate the proceedings by asking if they understood that each defendant was presumed to be innocent. Upon obtaining their affirmative replies, the trial court then stated

Let me also tell you that you have a right to remain silent thereby not giving any evidence against yourselves; however, if you want to proceed and dispose of your case by pleading guilty, I need for you to answer my questions out loud. We have a tape recorder

going and a court reporter that's taking down what I say and takes down your responses to my questions and statements. Do ya'll [sic] understand that?

The transcript reflects that the trial court accepted Wilson's guilty plea without otherwise addressing the right against compulsory self-incrimination.

"The entry of a guilty plea involves the waiver of three federal constitutional rights: the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers [cit.]. . . ." [Cit.] In a habeas corpus proceeding, the State has the burden to show that the defendant's guilty plea was voluntarily, knowingly, and intelligently made. [Cit.] Waiver cannot be presumed from a record that is silent. [Cit.] When the record reflects a failure to inform the defendant of each of his three Boykin rights prior to his entering a guilty plea, a judgment denying habeas relief must be reversed. [Cits.]

Sanders v. Holder, 285 Ga. 760, 761 (684 SE2d 239) (2009).

While nothing in Boykin requires the use of any precisely-defined language or "magic words" during a guilty plea proceeding, Adams v. State, 285 Ga. 744 (1) (683 SE2d 586) (2009), the trial court's discussion of Wilson's "right to remain silent" did not comply with the requirements of Boykin. That is because the trial court specifically limited its discussion of Wilson's "right to remain silent" to the guilty plea hearing itself, without ever informing him that, by pleading guilty, he would waive that right at trial. See Adams v. State, supra

at 746, fn. 3 (informing defendant of his "right to remain silent" is an acceptable substitute for the privilege against self-incrimination as long as it is clear that the trial court is referring to the right to remain silent "at trial"). Thus, the information the trial court provided Wilson failed to convey the essential concept of the right against compulsory self-incrimination that Wilson would be waiving by pleading guilty.

The record reflects that Wilson answered affirmatively at the guilty plea proceeding when asked whether he had been advised by his defense counsel of the "constitutional rights" he was waiving by pleading guilty. Likewise, defense counsel, when testifying at the habeas hearing, replied affirmatively to the question whether he had informed Wilson of his "constitutional rights." However, the specific "constitutional rights" referenced were never set forth at either proceeding.

Counsel did not testify as to any details of his advice to [Wilson] concerning the rights he would be giving up; counsel did not identify the rights about which he advised [Wilson], or testify as to counsel's standard practice in advising criminal defendants before guilty pleas in relation to the Boykin rights, or even mention "Boykin rights" in his testimony. [Cit.]

Arnold v. Howerton, 282 Ga. 66, 67 (646 SE2d 75) (2007). Although, unlike

counsel in Arnold, supra, counsel informed Wilson of his "constitutional" rights, there are several "constitutional" rights that may come into play with a guilty plea, see Uniform Superior Court Rule 33.8, but only the failure to inform a defendant of the three particular constitutional rights set forth in Boykin can support an award of habeas relief. See Britt v. Smith, 274 Ga. 611 (556 SE2d 435) (2001) (habeas relief granted only for the failure to inform a defendant of the three Boykin rights, not the rights set forth in USCR 33.8). Thus, counsel's acknowledgment that he informed Wilson of his "constitutional" rights is no more sufficient than the information counsel in Arnold provided regarding the "rights that [Arnold] would be giving up by pleading guilty." Arnold, supra at 67. We accordingly conclude that "the record in this case fails to show that any comment by the trial court, or by [Wilson's] counsel, informed him that by pleading guilty he would waive his privilege against compulsory self-incrimination. [Cit.]" Id. at 68. It follows that the habeas court erred by finding that the State met its burden of establishing that Wilson's guilty plea was made voluntarily, knowingly, and intelligently.

Judgment reversed. All the Justices concur.