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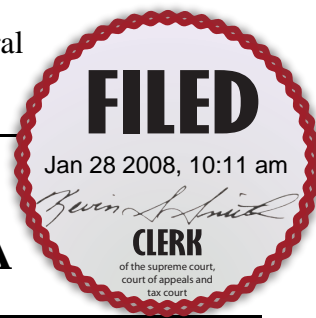
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**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS SMITH,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 16A01-0706-PC-278

APPEAL FROM THE DECATUR CIRCUIT COURT
The Honorable John A. Westhafer, Judge
Cause No. 16C01-0607-PC-94

January 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Thomas Smith appeals the denial of his petition for post-conviction relief. We affirm.

Issue

Did the post-conviction court err by denying Smith's petition?

Facts and Procedural History

On September 3, 2004, Smith was arrested and charged with residential entry, a class D felony, and possession of marijuana as a class A misdemeanor. On September 7, 2004, Smith appeared for an initial hearing. The trial court advised Smith of his right to counsel:

COURT: You're entitled to be represented by an attorney in connection with the charges against you. If you want an attorney, and you can't afford to hire one, the Court will appoint one for you. You have the right to a public and speedy jury trial, the right to face any witnesses against you, to cross examine them, as well as the right to have witnesses appear and testify for you. You have the right to remain silent. You can not be forced to offer evidence against yourself, and you have the right to have the State prove beyond a reasonable doubt the charges against you. Thomas, do you wish to have a lawyer?

SMITH: I'd like to change my other plea in my other charges to guilty. I'm pleading guilty to these charges [also], Your Honor.

COURT: Well, you're represented by an attorney in that other case.^[1]

SMITH: I know, Your Honor.

COURT: Who did I appoint for you?

SMITH: Matthew Bailey.

COURT: Have you talked to him yet?

¹ Apparently, another criminal case was pending against Smith at the time of his initial hearing in the instant case.

SMITH: Nope.

COURT: Do you want to talk to him?

SMITH: No, Your Honor. I overdosed this time. That's why I did all this.

....

COURT: Well, Thomas, you can plead guilty if you want to. That's a decision you have to make. But I need to have you understand that you do have the right to a lawyer if you want one. What do you want to do?

SMITH: Guilty. Guilty as charged.

Tr. at 2-3.

The trial court also asked Smith if he was under the influence of drugs. Smith responded that he was taking prescription drugs “[s]hertara, phiseral,^[2] and my [Z]oloft, but I got, I’m conscious, and I understand what you’re saying.” *Id.* at 4. He also stated that he had “over D’d” on crank, i.e. methamphetamine, three days prior to the hearing and had not used any illegal drugs since that incident. *Id.*

To establish a factual basis for Smith’s guilty plea, the prosecutor questioned Smith about the incidents leading to his arrest. Smith admitted that he opened Tamara Scudder’s basement door and entered her home without permission to do so. He stated that he had done so because he thought the police were “after [him].” *Id.* at 10. Smith also claimed that he did not know what he was doing when he entered Scudder’s home because he was under the influence of crank. Smith also admitted that he had marijuana in his shoe at the time of his

² The record does not reveal the actual names of the drugs that Smith mentioned here, but the State claims that they are, like Zoloft, antidepressants.

arrest. After finding that Smith's plea was made freely and voluntarily and had a factual basis, the trial court accepted Smith's guilty plea.

At Smith's sentencing hearing on September 13, 2004, the trial court noted that Smith's criminal history included one class D felony conviction for battery on a police officer. The trial court informed Smith that pleading guilty to residential entry, a class D felony, would make him a candidate for habitual offender status—and an additional sentence of up to thirty years—if he were convicted of a third felony offense in the future. When asked if he understood, Smith answered affirmatively. The trial court then asked Smith, “You still want to plead guilty today?” to which Smith responded, “Yes, Your Honor.” *Id.* at 19. The trial court then sentenced Smith to consecutive sentences of three years for class D felony residential entry and one year for class A misdemeanor marijuana possession.

On July 3, 2006, Smith filed a petition for post-conviction relief, in which he alleged that his guilty pleas were not voluntary and that he was denied the assistance of counsel. At an evidentiary hearing on his petition, Smith testified that he was not fully aware of what he was doing when he pled guilty without legal representation. He testified that at the time of the initial hearing, he was taking prescription medication, sleeping all day and night, and experiencing hot sweats and irritability. Smith also stated that he did not knowingly enter Scudder's house and therefore had a valid defense to the residential entry charge. The post-conviction court denied Smith's petition. This appeal ensued.

Discussion and Decision

A petitioner appealing the denial of post-conviction relief faces a rigorous standard of review. *Kien v. State*, 866 N.E.2d 377, 381 (Ind. Ct. App. 2007), *trans. denied*. We may consider only the evidence and reasonable inferences that support the post-conviction court's judgment. *Id.* To prevail on appeal, the petitioner must demonstrate that the evidence is uncontradicted and leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Id.*

Smith first alleges that the trial court violated his right to counsel. The Sixth Amendment to the United States Constitution guarantees a defendant the right of assistance of counsel at all critical stages of the criminal proceeding against him. *Puckett v. State*, 843 N.E.2d 959, 965 (Ind. Ct. App. 2006). While a criminal defendant can waive his right to counsel and proceed pro se, the waiver must be done voluntarily, knowingly, and intelligently. *Redington v. State*, 678 N.E.2d 114, 117 (Ind. Ct. App. 1997), *trans. denied*. In cases where the defendant is faced with the choice to proceed to trial with or without the aid of counsel, the trial court is required to "acquaint the defendant with the advantages to attorney representation and the drawbacks of self-representation." *Rice v. State*, 874 N.E.2d 988, 991-92 (Ind. Ct. App. 2007) (citing *Jones v. State*, 783 N.E.2d 1132, 1138 (Ind. 2003)). Indiana caselaw generally requires a warning to the effect that a pro se defendant will be treated like an attorney, that he will have to follow procedural and evidentiary rules, and that he will be responsible for making objections, as well as an explanation of the pitfalls of self-representation. *Redington*, 678 N.E.2d at 118.

As we noted in *Redington*, however, a guilty plea hearing is a proceeding of an

entirely different nature than a trial. *Id.* A defendant at a guilty plea hearing will not be confronted with the necessity of being educated on the subjects of trial procedure, evidence, examining witnesses, or making objections. *Id.* “Where the reason underlying the admonishments is absent, a trial court is not required to engage in superfluous warnings which have no bearing to the proceeding at hand.” *Id.* In the instant case, the trial court twice advised Smith of his right to counsel. The court also specifically asked Smith if he wanted to talk to the public defender assigned to another case pending against him. Smith refused and reiterated his desire to plead guilty. The exchange between Smith and the court set forth in the facts above is sufficient to show that Smith was properly informed of his right to counsel and that he knowingly, voluntarily, and intelligently waived that right.

Smith also argues that we should vacate his guilty pleas because he was under the influence of drugs when he pled guilty. A guilty plea constitutes a waiver of constitutional rights, and therefore, the trial court must evaluate the validity of every plea before accepting it. *Davis v. State*, 675 N.E.2d 1097, 1102 (Ind. 1996). A defendant’s guilty plea is not valid unless it is knowing, voluntary, and intelligent. *Id.*

At the plea hearing, Smith was generally responsive to the court’s questions. Smith identified three prescription drugs he was taking, but stated that he was “conscious” and understood what the court was saying. Tr. at 4. He stated that he had used an illegal drug, specifically methamphetamine, three days prior to the hearing. He related the details surrounding his entry into Scudder’s home, and he admitted to having had marijuana in his shoe. He confirmed that his plea was voluntary and that no one had promised him anything in exchange. The trial court explained the possible ramifications of Smith’s guilty plea,

including the imposition of maximum consecutive sentences totaling four years and the revocation of probation in another case, and Smith said that he understood them. Finally, the sentencing hearing occurred seven days later, at which time the trial court asked if Smith still wanted to plead guilty, and he responded affirmatively.

Smith points to a few pieces of evidence he claims are in his favor. First, he argues that he denied *knowingly* entering Scudder's home, raising a question as to whether there was a sufficient factual basis to support his plea. As the State points out in its brief, however, he was merely denying knowledge of his actions based on his assertion that he was under the influence of crank when he committed this crime. Voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Ind. Code § 35-41-2-5. Second, Smith testified at his post-conviction hearing that the prescription medications he was taking at the time of his guilty plea caused him to suffer hot sweats, irritability, and long periods of sleep. Even assuming these claims are true, however, Smith fails to explain why these symptoms would have prevented him from making knowing, voluntary, and intelligent pleas in this case. Third, he argues that his behavior was "unusual and bizarre" at the time of his arrest and at the time of his guilty plea hearing. Appellant's Br. at 11. The admittedly strange statements made by Smith during his arrest,³ when he had, in his own words, "over D'd" on methamphetamine, are irrelevant to his state of mind at the plea hearing three days later. Tr. at 4. In contrast, his statements at the plea hearing were generally coherent and responsive.

In sum, we cannot conclude that the evidence is uncontradicted and leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. Therefore, we affirm the denial of Smith's petition for post-conviction relief.

Affirmed.

DARDEN, J., and MAY, J., concur.

³ According to the police report, Smith told one arresting officer that the Ku Klux Klan was "after" Smith. Appellant's App. at 6. He also stated that one officer and his father would go to hell for their actions and began reciting passages from the Bible's Book of Revelation.