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IN THE COURT OF APPEALS OF INDIANA

T.D.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

October 31, 2022

Court of Appeals Case No.
22A-JV-1016

Appeal from the
Lake Superior Court

The Honorable
Jeffrey Miller, Magistrate

Trial Court Cause No.
45D06-2006-JD-288

Vaidik, Judge.

Case Summary

[1] T.D. admitted committing acts constituting Level 6 felony auto theft if committed by an adult, and the trial court found him to be a delinquent child and committed him to the Indiana Department of Correction. About a year

later, T.D. filed an Indiana Trial Rule 60(B)(6) motion to set aside, arguing his delinquency adjudication was void because the trial court accepted his admission without ensuring that he knowingly and voluntarily waived his statutory and constitutional rights as required by the juvenile waiver statute, Indiana Code section 31-32-5-1. The court denied the motion. Because the record shows that the court did not ensure that T.D. knowingly and voluntarily waived his statutory and constitutional rights when he admitted to auto theft, we find that his delinquency adjudication is void and should be set aside. We therefore reverse the trial court.

Facts and Procedural History

[2] In June 2020, the State filed a petition alleging T.D. was a delinquent child for committing acts constituting Level 6 felony auto theft and Class A misdemeanor theft if committed by an adult. T.D. was detained, and his attorney moved for his release. In the motion, T.D.'s attorney stated that he had spoken to T.D., who reported that he had "viewed [a] video on his rights" and had "no questions" about them. Appellant's App. Vol. II p. 28. The attorney also stated that he had informed T.D.'s mother of "her son's rights" and she had "no questions" about them. *Id*. The trial court denied T.D.'s motion for release. In the order, the court found that T.D. "has been advised of his rights, understands his rights, and has no questions regarding his rights." *Id*. at 30. The court also found that T.D.'s attorney had advised T.D.'s mother of "her rights" and she had "no questions" about them. *Id*.

[3] A virtual initial hearing was held on July 2. T.D.'s mother did not attend because her employer "would not allow her to join the hearing virtually." *Id.* at 37. A week later, on July 9, the trial court held an omnibus hearing, which T.D.'s mother attended. At the hearing, T.D.'s attorney told the trial court that T.D. and the State had reached an oral agreement[1] under which T.D. would admit to the auto-theft allegation in exchange for the dismissal of the theft allegation and disposition would be left to the discretion of the court. The court then engaged in the following colloquy with T.D. and his mother:

> THE COURT: All right, all right. Young man, is that what you want to do at this time? Admit to Count 1 and argue disposition?
>
> THE MINOR: Yes, sir.
>
> THE COURT: Mom is that what you want your son to do at this time?
>
> THE MOTHER: It's up to him.
>
> THE COURT: No. You have to be in agreement. It's not up to him. He's a minor.
>
> THE MOTHER: Yes.
>
> THE COURT: If you don't agree to it, then we can't do it.

[1] There is no written agreement in the record.

THE MOTHER: I agree.

Id. at 60. The court then asked T.D. about the offense, and he admitted that he "took the car" without permission. *Id*. The court did not discuss T.D.'s rights, reference a video, or explain that T.D. was waiving his rights by admitting to auto theft.

[4] Following the hearing, the trial court adjudicated T.D. a delinquent child. In its order, the court found that T.D. and his mother "understand the admission waives those rights explained in the video." *Id.* at 39. The court placed T.D. under the wardship of the DOC.

[5] A little over a year later, in September 2021, T.D. filed a motion for relief from judgment under Indiana Trial Rule 60(B)(6).[2] T.D. alleged that his admission "was not knowing, intelligent, or voluntary" because the trial court "made no mention or inquiries into the rights that T.D. was waiving." *Id.* at 48, 49. In support of his claim, T.D. attached the transcript from the omnibus hearing. The State did not submit any evidence.

[6] The trial court denied T.D.'s motion:

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[2] T.D. also relied on Trial Rule 60(B)(8) in the trial court and on appeal. Rule 60(B)(8) provides relief for "any reason justifying relief from the operation of the judgment[.]" A movant filing a motion under (B)(8) must allege "a meritorious claim or defense." T.D., however, does not address this requirement on appeal. Because we find that T.D. is entitled to relief under (B)(6), we need not address (B)(8).

> The Court finds that the juvenile was represented by counsel at the detention hearing, and at the initial hearing, and all subsequent hearings including the hearing where the plea agreement was presented and disposition was argued. The juvenile was presented with a video that goes over his rights several times before each court hearing. The juvenile was represented by counsel at each hearing. . . . The Court finds that the juvenile's admission was voluntary and knowingly given with the adequate assistance of counsel.

Id. at 124.

[7] T.D. now appeals.

Discussion and Decision

[8] T.D. contends the trial court erred in denying his Trial Rule 60(B) motion for relief from judgment. We first note that because a delinquency adjudication is civil in nature, post-conviction procedures are unavailable. *A.S. v. State*, 923 N.E.2d 486, 489 (Ind. Ct. App. 2010), *reh'g denied*. According to our Supreme Court, Trial Rule 60 is the "appropriate avenue" through which a juvenile must assert any claims of error related to an agreed delinquency adjudication (which is the juvenile-law counterpart to an adult defendant's guilty plea). *J.W. v. State*, 113 N.E.3d 1202, 1204, 1207-08 (Ind. 2019).

[9] Here, T.D. relies on Trial Rule 60(B)(6). Under Rule 60(B)(6), a trial court may relieve a party from a judgment if "the judgment is void." To prevail, the party must prove that the judgment is void, not voidable. *Koonce v. Finney*, 68 N.E.3d 1086, 1090 (Ind. Ct. App. 2017), *trans. denied*. "A void judgment is one that,

from its inception, is a complete nullity and without legal effect." *Stidham v. Whelchel*, 698 N.E.2d 1152, 1154 (Ind. 1998) (quotation omitted). "By contrast, a voidable judgment is not a nullity, and is capable of confirmation or ratification. Until superseded, reversed, or vacated it is binding, enforceable, and has all the ordinary attributes and consequences of a valid judgment." *Id.* (quotation omitted). "A Rule 60(B) motion alleging a judgment is void requires no discretion by the trial court because the judgment is void or valid and, thus, our review is de novo." *Chapo v. Jefferson Cnty. Plan Comm'n*, 164 N.E.3d 131, 133 (Ind. Ct. App. 2021), *reh'g denied*, *trans. denied*.

[10] T.D. argues his agreed delinquency adjudication is void and should be set aside because the trial court accepted his admission "without inquiring as to whether [he] knowingly, intelligently, and voluntarily waived his statutory and constitutional rights" as required by the juvenile waiver statute, Indiana Code section 31-32-5-1.[3] Appellant's Br. p. 17.

[11] Juveniles are entitled to many rights, both statutory and constitutional. According to Indiana Code section 31-37-12-5, trial courts must inform juveniles and their parents, guardians, or custodians (if present) that they have the following rights:

(A) Be represented by counsel.

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[3] The issue raised on appeal is not whether T.D. was properly advised of his rights; rather, the issue is whether T.D. properly waived his rights.

(B) Have a speedy trial.

(C) Confront witnesses against the child.

(D) Cross-examine witnesses against the child.

(E) Obtain witnesses or tangible evidence by compulsory process.

(F) Introduce evidence on the child's own behalf.

(G) Refrain from testifying against himself or herself.

(H) Have the state prove beyond a reasonable doubt that the child committed the delinquent act charged.

See also Ind. Code §§ 31-32-2-1, -2. These rights spring from the United States Constitution and are guaranteed to juveniles. *See In re K.G.*, 808 N.E.2d 631 (Ind. 2004) (noting that juveniles have the following constitutional rights: the right against double jeopardy, the right to proof beyond a reasonable doubt, the right to an attorney, the right against self-incrimination, and the right to confront and cross-examine witnesses); *see also A.M. v. State,* 134 N.E.3d 361 (Ind. 2019), *reh'g denied*; *In re Gault*, 387 U.S. 1 (1967), *abrogated on other grounds*.

[12] The juvenile waiver statute provides "only" three ways to waive rights that state or federal law grants to juveniles—waiver by counsel; waiver by a parent, guardian, custodian, or guardian ad litem; or waiver by the juvenile:

> Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:
>
> (1) by counsel retained or appointed to represent the child if the child knowingly and voluntarily joins with the waiver;
>
> (2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:
>
> > (A) that person knowingly and voluntarily waives the right;
> >
> > (B) that person has no interest adverse to the child;
> >
> > (C) meaningful consultation has occurred between that person and the child; and
> >
> > (D) the child knowingly and voluntarily joins with the waiver; or
>
> (3) by the child, without the presence of a custodial parent, guardian, or guardian ad litem, if:
>
> > (A) the child knowingly and voluntarily consents to the waiver; and
> >
> > (B) the child has been emancipated under IC 31-34-20-6 or IC 31-37-19-27, by virtue of having married, or in accordance with the laws of another state or jurisdiction.

I.C. § 31-32-5-1.

[13] Under all three options, the juvenile's waiver must be knowing and voluntary. Juvenile admissions are equivalent to adult pleas of guilty. When an adult defendant pleads guilty, the record "must demonstrate that the defendant was advised of his constitutional rights and knowingly and voluntarily waived them." *Ponce v. State*, 9 N.E.3d 1265, 1270 (Ind. 2014) (quotation omitted). *Boykin v. Alabama*, 395 U.S. 238 (1969), "requires that a trial court accepting a guilty plea must be satisfied that an accused is aware of his right against self-incrimination, his right to trial by jury, and his right to confront his accusers." *Dewitt v. State*, 755 N.E.2d 167, 171 (Ind. 2001) (quotation omitted). Under *Boykin*, a conviction must be vacated if the defendant was not advised at the time of his plea—and did not otherwise know—that he was waiving his *Boykin* rights. *Id.* Given the constitutional rights and special protections afforded to juveniles, the standard for challenging juvenile waivers should be the same as that for adult pleas of guilty, even though juveniles must request relief under Trial Rule 60(B) rather than the post-conviction rules. A juvenile must freely and with informed consent enter into an admission. *J.W.*, 113 N.E.3d at 1207.

[14] For its part, the State doesn't dispute that the trial court failed to ensure that T.D. knowingly and voluntarily waived his rights when he admitted to auto theft. As already noted, at the omnibus hearing the trial court did not discuss T.D.'s rights, reference a video, or explain that T.D. was waiving his rights by admitting to auto theft. *See* Appellant's Reply Br. p. 17 ("The transcript shows [T.D.'s] rights weren't even mentioned, let alone waived, on the date of his admission."). Instead, the State argues that a "juvenile court's failure to follow

the procedures outlined in the juvenile waiver statute is not the kind of infirmity that makes a judgment void." Appellee's Br. p. 15. In other words, the State claims that the trial court's failure to follow the juvenile waiver statute was a "procedural error" that made T.D.'s delinquency adjudication voidable, not void. *Id.* at 17. In support, the State relies on two cases from our Supreme Court, *K.S. v. State*, 849 N.E.2d 538 (Ind. 2006), and *In re Guardianship of A.J.A.*, 991 N.E.2d 110, 115 (Ind. 2013).

[15] In the first case, *K.S.*, the State filed a petition alleging K.S. was a delinquent child for committing acts constituting Class A misdemeanor battery if committed by an adult. K.S. admitted the allegations, and the trial court adjudicated him a delinquent child and placed him on probation. Over the next year, K.S. violated his probation several times. The appeal arose after K.S. claimed "the court did not have 'jurisdiction over the case' from the very beginning because it failed to approve by written order the filing of the original delinquency petition." *K.S.*, 849 N.E.2d at 541. Our Supreme Court found that although Indiana Code section 31-37-10-2 requires juvenile courts to approve the filing of delinquency petitions, the failure to do so is "a procedural error" that is voidable. *Id.* at 542.

[16] In the second case, *A.J.A.*, M.A. murdered his wife in the presence of their two children, and M.A.'s mother ("Grandmother") sought visitation. The trial court awarded visitation to Grandmother, but the children's guardian moved to set aside the judgment on grounds it was void. Specifically, the guardian alleged that Grandmother did not have standing to seek visitation under the

Grandparent Visitation Act.[4] The trial court granted the motion to set aside, and Grandmother appealed.

[17] In affirming the trial court, our Supreme Court distinguished *K.S.*: "Unlike the present case, *K.S.* is about a procedural error." *A.J.A.*, 991 N.E.2d at 115. The Court reasoned that *A.J.A.* was "markedly different" because "Grandmother did not have standing under the strict terms of the" Grandparent Visitation Act and thus "had no legal right to pursue grandparent visitation under the statute." *Id.*

[18] The State argues this case is more like *K.S.* than *A.J.A.* because it involves a procedural error, that is, the trial court's failure to follow the juvenile waiver statute. We, however, find that a trial court's failure to follow the juvenile waiver statute is not a procedural error. Unlike the statute in *K.S.* that requires juvenile courts to merely approve the filing of delinquency petitions, the juvenile waiver statute ensures that juveniles knowingly and voluntarily waive important constitutional and statutory rights. "Strict compliance" with the statute is required to safeguard these rights. *Deckard v. State*, 425 N.E.2d 256, 257 (Ind. Ct. App. 1981). As our Supreme Court has explained:

> For good or ill, the [juvenile waiver] statute does not permit waiver even when the Constitution would. In that respect, the

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[4] Indiana Code section 31-17-5-1 provides that a child's grandparent may seek visitation rights if the child's parent is deceased or the marriage of the child's parents has been dissolved in Indiana. Grandmother argued that M.A. should be considered deceased based on his prison sentence of sixty years or that the marriage was technically dissolved due to M.A. murdering his wife.

> statute affords juveniles with greater rights than the Constitution requires.

R.R. v. State, 106 N.E.3d 1037, 1043 (Ind. 2018); *see also Wehner v. State*, 684 N.E.2d 539, 541 (Ind. Ct. App. 1997) (noting that the juvenile waiver statute "sets forth a different standard of waiver for juveniles because admissions and confessions by juveniles require special caution"). The juvenile waiver statute is not a procedural statute.

[19] This Court has already addressed a similar issue. In *A.S.*, the juvenile admitted to being a delinquent child. Thereafter, the juvenile filed a Trial Rule 60(B)(6) motion to set aside, arguing she had not knowingly and voluntarily waived her right to counsel under the juvenile waiver statute and therefore her agreed delinquency adjudication was void and should be set aside. We held:

> [W]e simply cannot find any evidence establishing that Mother and A.S. knowingly and voluntarily waived the right to counsel. Similarly, there is no evidence that they were advised of that right and the dangers of proceeding pro se and had a subsequent opportunity for a meaningful consultation on the issue. Indeed, nowhere in the record do they actually express a desire to proceed pro se. Under these circumstances, therefore, we find that A.S.'s adjudications are void and, consequently, she is entitled to relief from judgment.

A.S., 923 N.E.2d at 492-93. Although *A.S.* involved waiver of the right to counsel, which is not at issue here, that is immaterial. The juvenile waiver statute applies to "[a]ny rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law"—

not just the right to counsel. Thus, under *A.S.*, a trial court's failure to ensure that a juvenile knowingly and voluntarily waives his rights when the juvenile admits to being a delinquent child means that the agreed delinquency adjudication is void under Trial Rule 60(B)(6). *See also N.M.*, 791 N.E.2d at 802 (reversing trial court's denial of juvenile's Trial Rule 60(B) motion because juvenile did not knowingly and voluntarily waive right to counsel).

[20] Because the record shows that T.D. did not freely and with informed consent enter into his admission, he has met his burden of proving his delinquency adjudication is void and should be aside.[5]

[21] Reversed.

Riley, J., concurs.

Bailey, J., dissents with separate opinion.

[5] The dissent contends claimants such as T.D. may find relief from their involuntary admissions using Rule 60(B)(8). But as the dissent also notes, such an argument requires the showing of a meritorious defense. This requirement would effectively shift the burden of proof to T.D. to prove he has a plausible defense to the underlying charges despite his involuntary admission.

T.D.,
Appellant-Respondent,

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State of Indiana,
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Bailey, Judge, dissenting.

[23] I respectfully dissent. I agree with the majority that the court did not adequately advise T.D. of his rights prior to accepting his admission such that his admission was not knowing or voluntary. Indeed, as discussed by the majority, at no point during the omnibus hearing did the court explain T.D.'s rights to him or his mother or otherwise ask if either had viewed the video or understood what it had explained. However, I cannot agree with the majority that the error rendered the judgment void.

[24] An "order is void only when the action or subject matter it describes has no effect whatsoever and is incapable of confirmation or ratification." *M.S. v. C.S.*, 938 N.E.2d 278, 284 (Ind. Ct. App. 2010) (quotation marks omitted). Orders

have been found to be void where a party lacked standing to request the order, see *Kitchen v. Kitchen*, 953 N.E.2d 646, 651 (Ind. Ct. App. 2011), and where the court lacked personal jurisdiction, see *In re Adoption of D.C.*, 887 N.E.2d 950, 958 (Ind. Ct. App. 2008). In addition, "a conviction established by denial of the Sixth Amendment rights is void." *Harris v. State*, 861 N.E.2d 1182, 1186 (Ind. 2007). "Voidable, however, describes an action or subject matter which nonetheless operates to accomplish the thing sought to be accomplished, until the fatal flaw is judicially ascertained and declared." *M.S.*, 938 N.E.2d at 284 (quotation marks omitted). This Court has found orders to be "merely voidable" when the defect was "in form" or a "procedural irregularity, which is capable of being cured." *Id*.

[25] In his brief on appeal, T.D. does not cite any relevant case law or legal authority to support his position that a violation of Indiana Code Section 31-32-5-1 renders a judgment void.[6] Rather, some of the cases T.D. cites tend to undermine his argument. Indeed, he cites cases for the proposition that "[s]trict compliance with the Statute is required for valid waivers with regard to

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[6] T.D. relies in part on the Supreme Court's opinion in *McCarthy v. United States*, 394 U.S. 459 (1969). However, the decision in that case was "based solely upon [the Court's] construction of Rule 11 [of the Federal Rules of Criminal Procedure] and is made pursuant to [its] supervisory powers over the lower federal courts; [it did] not reach any of the constitutional arguments petitioner urges as additional grounds for reversal." *Id*. at 464. In other words, *McCarthy* only addressed the effect of a federal court's failure to comply with Rule 11 of the Federal Rules of Criminal Procedure. It did not consider the effect of a state court's failure to comply with Indiana Code Section 31-32-5-1. As such, *McCarthy* is not applicable here. T.D. also relies on this Court's opinion in *N.M. v. State*, 791 N.E.2d 802 (Ind. Ct. App. 2003). However, that Court did not consider whether the unknowing or involuntary waiver of rights prior to an admission rendered a judgment void as required under Trial Rule 60(B)(6). As such, *N.M.* is not relevant.

juveniles," but none of those cases hold that a judgment is void for failure to comply with the relevant statute. Appellant's Br. at 21. For instance, in *Bryant v. State*, this Court held that statements made by a juvenile were inadmissible when the juvenile made them without a chance to consult with his mother in violation of Indiana Code Section 31-32-5-1. 802 N.E.2d 486, 494 (Ind. Ct. App. 2004). Similarly, in *Stewart v. State*, our Supreme Court held that the court had erred when it admitted a statement given by the juvenile when the juvenile did not have a meaningful chance to speak to his custodial parent. 754 N.E.2d 492, 496 (Ind. 2001). However, while both courts found a violation of Indiana Code Section 31-32-5-1, they each proceeded to consider whether the error constituted harmless error. See *Bryant*, 802 N.E.2d at 494; see also *Stewart*, 754 N.E.2d at 496. And the court in *Bryant* determined that the error was indeed harmless. *Bryant*, 802 N.E.2d at 494. It goes without saying that an error that renders a judgment void cannot be harmless. In other words, had the violation of Indiana Code Section 31-32-5-1 resulted in a void judgment, the inquiry would have ended there, and neither Court would have considered anything further. Thus, I would hold that, while the court erred, the resulting judgment was not void.

[26] Still, we note that the majority likens juvenile admissions to adult guilty pleas, states that an adult conviction must be vacated if the adult did not knowingly or voluntarily waive his rights prior to pleading guilty, and concludes that the judgment following a juvenile's admission is void if it was not made knowingly or voluntarily. However, I find two problems with this analysis. First, it is well

settled that "[p]roceedings in juvenile court are civil proceedings, not criminal in nature" and that "[a]n act of juvenile delinquency is not a crime." *M.R. v. State*, 605 N.E.2d 204, 207 (Ind. Ct. App. 1992); see also *T.K. v. State*, 899 N.E.2d 686, 687-88 (Ind. Ct. App. 2009). Further, juveniles are not defendants. See *T.K.*, 899 N.E.2d 686, 688 (holding that, because the juvenile "was never a defendant," Indiana Appellate Rule 7(B) did not apply). In addition, "the purpose of the juvenile process is vastly different from the criminal justice system." *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010). In particular, "the goal of the juvenile process is rehabilitation so that the youth will not become a criminal as an adult." *Id*. (emphasis removed). Thus, on its face, I cannot compare a juvenile proceeding to an adult criminal proceeding.

[27] Second, while the majority is correct that an adult's guilty plea must be vacated if it was not made knowingly or voluntarily, that does not render the judgment against the adult void. Again, an "order is void only when the action or subject matter it describes has no effect whatsoever and is incapable of confirmation or ratification." *M.S.*, 938 N.E.2d at 284. "Voidable, however, describes an action or subject matter which nonetheless operates to accomplish the thing sought to be accomplished, until the fatal flaw is judicially ascertained and declared." *M.S.*, 938 N.E.2d at 284 (quotation marks omitted). Should an adult plead guilty despite an unknowing or involuntary waiver of his or her rights, that guilty plea remains in full force and effect unless it is challenged. Thus, the judgment is merely voidable, not void. Similarly, here, at most, an

admission following the unknowing or involuntary waiver of a juvenile's rights results in a judgment that is merely voidable, not one that is void.

[28] I sympathize with T.D. There is no question that the court erred. However, I cannot hold that an order is void simply because the court violated a statute. Should the Indiana General Assembly or our Supreme Court want to hold that the failure to comply with Indiana Code Section 31-32-5-1 results in a void judgment, that would be their prerogative. But as the intermediate appellate court, we are constrained by the law as it is today. And as the statute and trial rules are written today, I cannot say that a violation of the statute results in a void judgment that would entitle T.D. to relief under Trial Rule 60(B)(6).

[29] That is not to say that T.D. was without recourse. T.D. could have filed, and indeed did file, a motion for relief from judgment pursuant to Trial Rule 60(B)(8). Under that rule, a court may grant relief from a judgment for "any reason justifying relief from the operation of the judgment[.]" Ind. Trial Rule 60(B)(8). However, as the majority acknowledges, that rule requires a movant to "allege a meritorious claim or defense," which requirement T.D. wholly failed to satisfy. Trial Rule 60(B) (emphasis added).[7] While I would not hold that the judgment against T.D. is void, it is entirely possible that, had T.D.

[7] Contrary to the majority's assertions, I would not require T.D. to prove that he has a plausible defense to the underlying charges. Rather, as Trial Rule 60(B)(8) requires, I would simply require T.D. to allege a meritorious defense. Here, not only did T.D. fail to allege a meritorious defense, he failed to even acknowledge the requirement under the rule that he do so.

properly pled his claim under Trial Rule 60(B)(8), he would have been successful.

[30] For the foregoing reasons, I dissent.