

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0869

STATE OF LOUISIANA

VERSUS

BRUCE EDWARD EPPERLEY

Judgment Rendered: FEB 14 2014

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On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 502457

Honorable Raymond S. Childress, Judge Presiding

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

TMH
mt.
QJ

HIGGINBOTHAM, J.

Defendant, Bruce Edward Epperley, was charged by bill of information with one count of driving while intoxicated (“DWI”), fourth offense, a violation of La. R.S. 14:98(E). He initially pled not guilty. Defendant filed a motion to quash his first and second predicate DWI convictions, which the trial court denied. Thereafter, defendant withdrew his prior plea of not guilty and entered a plea of guilty, reserving his right to seek review of the ruling on the motion to quash pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976). The trial court sentenced defendant to ten years at hard labor, with the first two years to be served without benefit of probation, parole, or suspension of sentence. The trial court also ordered him to pay a \$5,000 fine and court costs. Defendant filed an earlier appeal in which he urged an assignment of error that the trial court erred in denying his motion to quash. Pursuant to that appeal, this court remanded defendant’s case for a reopened hearing on his motion to quash. See State v. Epperley, 2011-1330 (La. App. 1st Cir. 2/10/12), 90 So.3d 553 (unpublished).

On remand, the trial court held a full hearing on defendant’s motion to quash. Following that hearing, the trial court again denied the motion. Defendant again appealed that ruling to this court, but his appeal was dismissed because it was untimely. See State v. Epperley, 2012-1784 (La. App. 1st Cir. 2/28/13) (unpublished).

Following the dismissal of defendant’s second appeal, the trial court granted defendant’s postconviction relief application seeking an out-of-time appeal. Accordingly, defendant has filed the instant appeal. He alleges one counseled assignment of error related to the trial court’s denial of his motion to quash. Defendant also lists approximately seven pro se assignments of error in two briefs, although he has only briefed the issue of the trial court’s denial of his motion to quash. For the following reasons, we affirm defendant’s conviction and sentence.

FACTS

Because defendant pled guilty, the facts of his offense were not developed for the record. The bill of information filed in this case alleged that defendant committed the offense of DWI on January 23, 2011. The bill further alleges that defendant had three prior convictions for DWI: 1) a conviction under St. Tammany Parish docket number 350776, on February 10, 2003; 2) a conviction under St. Tammany Parish docket number 332990, on April 18, 2002; and 3) a conviction under St. Tammany Parish docket number 247696, on February 15, 1996. At his May 26, 2011 **Boykin**¹ hearing, defendant stipulated that there was a factual basis for his guilty plea.

MOTION TO QUASH

In his sole counseled assignment of error and the only briefed pro se assignment of error, defendant contends that the trial court erred in denying his motion to quash. Specifically, defendant argues that the transcripts of his earlier pleas are inadequate to demonstrate a proper waiver of his **Boykin** rights in those cases.²

In order for a guilty plea to be used as a basis for actual imprisonment, enhancement of actual imprisonment, or conversion of a subsequent misdemeanor into a felony, the trial judge must inform the defendant that by pleading guilty he waives: (a) his privilege against compulsory self-incrimination; (b) his right to trial and jury trial where applicable; and (c) his right to confront his accuser. The judge must also ascertain that the accused understands what the plea connotes and its consequences. See State v. Cadiere, 99-0970 (La. App. 1st Cir. 2/18/00), 754 So.2d 294, 296, writ denied, 2000-0815 (La. 11/13/00), 774 So.2d 971. In **State v.**

¹ **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

² On his first appeal to this court, defendant challenged the calculation of the cleansing period with respect to his 1996 DWI offense. On remand, the trial court heard evidence about the terms of defendant's actual imprisonment for that offense and each of his subsequent DWI offenses. The trial court concluded that defendant's 1996 offense did not fall outside of the ten-year cleansing period. However, defendant does not raise this issue in his instant appeal.

Carlos, 98-1366 (La. 7/7/99), 738 So.2d 556, the Louisiana Supreme Court held that the burden-shifting principles of **State v. Shelton**, 621 So.2d 769 (La. 1993), are applicable to multiple-offense DWI cases. **Carlos**, 738 So.2d at 558-59; see also **State v. Vaughn**, 2003-1585 (La. App. 1st Cir. 5/14/04), 879 So.2d 772, 776.

Under this burden-shifting scheme, if the defendant denies the allegations of a bill of information, the state has the initial burden to prove the existence of the prior guilty pleas and that the defendant was represented by counsel when the pleas were taken. If the state meets this initial burden, the defendant must produce affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant carries this burden, then the burden reverts to the state to prove the constitutionality of the plea. See Vaughn, 879 So.2d at 776. **Boykin** requires only that a defendant be informed of the three rights enumerated above. The jurisprudence has been unwilling to extend the scope of **Boykin** to include advising a defendant of any other rights he may have. See Cadriere, 754 So.2d at 297.

The record is unclear about the exact order that certain documentation was submitted to the trial court in this case. Prior to defendant's first appeal, the state appears to have provided the trial court with the transcript from defendant's 1996 guilty plea. After remand, at the reopened motion to quash hearing, the state elicited testimony from defendant's probation officer relating to his terms of actual imprisonment. At that hearing, neither side made any argument regarding the constitutionality of defendant's prior guilty pleas. However, in defendant's first appeal, this court directed the trial court to consider the adequacy of the **Boykin** colloquies from defendant's two prior (1996 and 2002) convictions. See State v. Epperley, 2011-1330 (La. App. 1st Cir. 2/10/12), 90 So.3d 553 (unpublished). From the record, it appears that both the state and defendant submitted copies of

the transcripts from all three of defendant's prior pleas.³ The trial court then addressed defendant's **Boykin** arguments in its written reasons for judgment. In the interest of simplicity and because the trial court considered the **Boykin** transcripts for each prior plea, we simply move to the third step of the burden-shifting analysis and address whether the state proved the constitutionality of the pleas.

1996 DWI Conviction (247696)

Defendant's counseled and pro se briefs argue that his 1996 DWI conviction under St. Tammany Parish docket number 247696 was unconstitutionally obtained because he was inadequately informed of his "right to remain silent."

A review of defendant's February 15, 1996 plea colloquy reveals that he pled guilty on that day to fourth-offense DWI. Prior to doing so, defendant engaged in a full **Boykin** colloquy with the trial court. During this conversation, the trial judge clearly informed defendant that if he opted to go to trial, he would "have the right to invoke the privilege against self-incrimination and to remain silent." After the full colloquy, the trial court asked if defendant's counsel was satisfied that defendant knowingly, intelligently, voluntarily, and willingly desired to enter this plea. Defense counsel replied that he was.

In the instant appeal, defendant contends that this instruction was deficient because it did not inform him that his silence could not be used against him if he decided to go to trial and remain silent. However, he offers no authority as support for this position. In fact, this court has previously upheld a colloquy advising a defendant only of his "right to remain silent" with no additional language that even referred to the right against self-incrimination. See State v. Dumas, 96-2748 (La. App. 1st Cir. 11/7/97), 703 So.2d 112, 113-14. After reviewing the transcript of the 1996 guilty plea hearing, we conclude that the state met its burden of proving

³ We note that defendant himself submitted at least three pro se "proffers" to which he attached copies of these transcripts.

the constitutionality of this plea. Defendant was represented by counsel and properly informed of his rights under **Boykin**. Nothing in the record lends any weight to defendant's contention that his 1996 guilty plea was unconstitutionally secured.⁴

2002 and 2003 DWI Convictions (332990 and 350776)

Defendant's counseled and pro se briefs argue that his 2002 DWI conviction was unconstitutionally obtained because the trial court failed to adequately inform him of his right to a jury trial. His pro se brief also makes the same argument with respect to his 2003 DWI conviction.

We note that the trial court did not specifically address this contention in its written reasons for judgment, likely because defendant's motion to quash simply stated that the **Boykin** processes for defendant's prior convictions "were incomplete," without more detailed explanations. To the extent that the trial court's denial of defendant's motion to quash was sufficient to preserve this issue for review, we address its merits below.⁵

Prior to his 2002 and 2003 guilty pleas, defendant engaged in **Boykin** colloquies with the trial court. In each of these colloquies, he was informed that he had a right to "a trial in open court with or without a jury." He was represented by counsel at both of these pleas.

Defendant now contends that these instructions regarding his right to a jury trial were deficient because they did not make clear that defendant alone had the option to proceed to trial either with or without a jury. He argues that such an instruction is required to adequately inform a defendant of his rights under **Boykin**. However, defendant again cites no authority to support this contention. We agree

⁴ The trial court noted in its written reasons for judgment that it had previously granted a motion to quash in one of defendant's earlier cases (350776) after it found this contention related to defendant's 1996 conviction to be meritorious. However, the trial court stated that it believed this earlier ruling to be erroneous, and we agree with that reassessment.

⁵ We note that defendant's motion to quash did not raise the issue of any irregularity with the **Boykin** colloquy in his 2003 conviction. However, because defendant's pro se argument regarding this conviction takes issue with language similar to that used in his 2002 conviction, we simply elect to consider that argument as well.

with the state that any further explanation to defendant of his right to a jury trial was unnecessary, especially considering that defendant was represented by counsel at both of these pleas. Therefore, we find that nothing in the record supports defendant's contention that his 2002 and 2003 guilty pleas were unconstitutionally obtained.

This assignment of error is without merit.

PRO SE ASSIGNMENTS OF ERROR

In the instant case, defendant filed a pro se brief and a supplemental pro se brief which are nearly identical. Both pro se briefs list approximately seven assignments of error:

1. The trial court erred in denying defendant's pro se motions filed on April 16, 2012.
2. The trial court erred in denying defendant's pro se motion/notice of intent to seek supervisory writs.
3. The trial court erred in holding defendant's 2011 hearing on his motion to quash without defendant being present.
4. The trial court erred in not considering his pro se motions filed on April 16, 2012 and July 24, 2012.
5. The trial court erred in failing to inform defendant of his rights as to a **Crosby** plea.
6. The trial court erred in failing to inform defendant that he would be waiving all non-jurisdictional errors with his guilty plea.
7. The trial court erred in not maintaining fairness in the court hearing and by appointed counsel being so ineffective that the court lost jurisdiction to sentence defendant to hard labor.

Despite listing these assignments of error, defendant's pro se briefs only address in detail the issue of the denial of his motion to quash. The remaining portions of his briefs are filled with personal statements regarding the circumstances of his case and recitations of both applicable and inapplicable law. Outside of his handwritten adaptation of his counseled brief to address the denial of his motion to quash, defendant offers no true briefing of any of the above issues.

Assignments of error not briefed by a defendant on appeal are considered abandoned. Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4. Because defendant makes no arguments and cites no authorities relating to these pro se assignments of error, they are deemed abandoned.⁶ See State v. Williams, 632 So.2d 351, 353 (La. App. 1st Cir. 1993), writ denied, 94-1009 (La. 9/2/94), 643 So.2d 139.

CONVICTION AND SENTENCE AFFIRMED.

⁶ We note that to the extent defendant's pro se motion to quash, filed April 16, 2012, was sufficient to raise issues related to the **Boykin** colloquies in his prior pleas, the above discussion of the merits applies.