Affirmed and Memorandum Opinion filed May 18, 2021.

In The

Fourteenth Court of Appeals

NO. 14-19-00192-CR

JEREMY DENSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 1585395

M E M O R A N D U M O P I N I O N

Appellant Jeremy Denson pleaded guilty to and was convicted of sexual assault of a child younger than 17 years old and was sentenced to 12 years in prison. Citing contradictory statements that he signed and initialed in his plea documents, appellant contends, in two issues, that the trial court erred in accepting his guilty plea without confirming that it was entered knowingly and voluntarily and his trial counsel provided ineffective assistance of counsel by affirming that the plea was knowingly and voluntarily given. We affirm.

Background

Appellant was charged by indictment with sexual assault of a child younger than 17 years old. Appellant pleaded guilty, and as a part of that process, he signed and initialed several documents, including a Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession; Admonishments; and Sex Offender Admonishments. Appellant also entered his plea in open court before the trial judge, although he waived the preparation of a record of that hearing and thus no record was made.

At the heart of his appellate complaints, appellant highlights four perceived discrepancies or inconsistencies in the plea documents. First, in the Waiver of Constitutional Rights that appellant signed, it states that "I intend to enter a plea of guilty and the prosecutor will recommend that my punishment should be set at Presentence Investigation and I agree to that recommendation," but in the Admonishments, appellant placed his initials beside a paragraph that includes the statements, "I . . . decline to participate in the preparation of a Presentence Investigation Report and request that said report not be made prior to the imposition of sentence." Second, in the Admonishments, appellant placed his initials beside a paragraph that states, "I have not been previously convicted of a felony offense," as well as another paragraph that states the opposite, "I have been convicted of a felony offense."

Third, paragraph 4 of the Sex Offender Admonishments states:

> I understand I am subject to the above described registration program [under Texas Code of Criminal Procedure article 26.13] and **the duty to register does not generally expire until ten years after my sentence or community supervision ends** because I will have been convicted or placed on deferred adjudication for one of the offenses listed below:

[listed offenses omitted]

OR

I understand I am subject to the above described registration program and **the duty to register is for the remainder of my life** because I have been convicted or placed on deferred adjudication for one of the offenses below:

[listed offenses omitted but included sexual assault].

(Emphasis added). It appears that appellant initialed before the first section of paragraph 4 and possibly before the second section. There is a mark before the second section, but it is not clear that it is appellant's initials.

Fourth, in the Admonishments, appellant initialed before paragraphs stating both that he waived the filing of a grand jury indictment and that he "read the indictment and . . . committed each and every element alleged." As will be detailed below, the plea documents also contained affirmations signed by the trial judge and by appellant's trial counsel regarding the proceedings.

Appellant contends that the inconsistencies in the plea documents should have alerted the trial judge that appellant may have lacked understanding about the consequences of his guilty plea and that the trial court should have made inquiries on the record to ensure that appellant understood the consequences and knowingly and voluntarily pleaded guilty. Appellant further contends that his trial counsel was ineffective in affirming the contradictory statements and not ensuring appellant entered his plea knowingly and voluntarily.

Alleged Error

Due process protections under the United States Constitution require that "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Davison v. State*, 405 S.W.3d 682, 686

(Tex. Crim. App. 2013) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). When a defendant pleads guilty, he relinquishes his Sixth Amendment rights to trial by jury and confrontation of witnesses as well as his Fifth Amendment privilege against self-incrimination. *Id*. (citing *McCarthy v. United States*, 394 U.S. 459, 466 (1969)). For a guilty plea to withstand constitutional scrutiny, the defendant must possess actual awareness of the nature and gravity of both the charges and the constitutional rights and privileges he is relinquishing, in other words, "a full understanding of what the plea connotes and of its consequence." *Id*. at 686-87 (quoting *Boykin v. Alabama*, 395 U.S. 238, 244 (1969)).

Moreover, pursuant to the Supreme Court in *Boykin*, "the record must affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly and voluntarily." *Brady*, 397 U.S. at 747 n.4 (discussing *Boykin*). If the appellate record contains no evidence a defendant understood the rights he was waiving by pleading guilty, the conviction must be reversed. *See, e.g.*, *United States v. Benitez*, 542 U.S. 74, 84 n.10 (2004); *Davison*, 405 S.W.3d at 687. For a defendant to prevail on a due process claim under these circumstances, the record must either affirmatively reflect that he did not understand the nature of the plea and its consequences or be silent with respect to whether he was provided or otherwise aware of the requisite information. *See Davison*, 405 S.W.3d at 687. In other words, "*Boykin* operates like a rule of default: Unless the appellate record discloses that a defendant entered his guilty plea 'voluntarily and understandingly,' a reviewing court must presume that he did not, and rule accordingly." *Id*. at 690. In assessing the voluntariness of a guilty plea, we examine the entire record and consider the totality of the circumstances surrounding the plea. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998); *Houston v. State*, 201 S.W.3d 212,

217 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

Texas Code of Criminal Procedure article 26.13(a) requires trial courts to admonish defendants, either orally or in writing, of certain facts and consequences attendant to a guilty plea before accepting such a plea. Tex. Code Crim. Pro. art. 26.13(a), (d). Additionally, a court may not accept a guilty plea "unless it appears that the defendant is mentally competent and the plea is free and voluntary." *Id*. art. 26.13(b). When the record shows that the trial court admonished the defendant in substantial compliance with article 26.13, a prima facie showing that his guilty plea was knowing and voluntary is created. *Martinez*, 981 S.W.2d at 197; *Smith v. State*, 609 S.W.3d 351, 353 (Tex. App.—Houston [14th Dist.] 2020, pet. ref'd). The defendant then has the burden to show that he did not fully understand the consequences of his plea and that he was misled or harmed by the admonition. *Martinez*, 981 S.W.2d at 197; *Smith*, 609 S.W.3d at 353. When, as here, a defendant waives his right to have a record taken of the plea proceedings and later challenges on appeal the voluntariness of his plea, the defendant retains his burden to ensure a sufficient record is presented on appeal to establish error. *Houston*, 201 S.W.3d at 218. Moreover, we presume recitals in court documents are correct unless the record affirmatively shows otherwise. *See id*. (citing *Breazeale v. State*, 683 S.W.2d 446, 450 (Tex. Crim. App. 1984)).

Appellant acknowledges that he signed and initialed admonishments in the plea documents, including but not limited to admonishments that by pleading guilty he was waiving the rights to trial by jury and confrontation of witnesses as well as the privilege against self-incrimination, that he was entering the plea voluntarily, and that he understood its nature. Appellant also acknowledges that such admonishments created a prima facie showing that his guilty plea was knowing and voluntary. *See* Tex. Code Crim. Pro. art. 26.13; *Martinez*, 981

S.W.2d at 197; *Smith*, 609 S.W.3d at 353. Appellant insists, however, that because he initialed inconsistent paragraphs in the plea documents, the record fails to show that he entered his guilty plea voluntarily and understandingly as required by *Boykin*. *See Davison*, 405 S.W.3d at 690. On this basis, appellant asserts in his first issue that the trial court failed to fulfill its duty under *Boykin* to ensure that the record reflected appellant understood the nature of his plea and its consequences. Appellant posits that the trial judge should have at least asked appellant about the inconsistent paragraphs on the record.[1]

As stated, because appellant waived his right to have a record taken of the plea proceedings, we do not actually know the specifics of the verbal plea or the inquiries made by the court regarding appellant's understanding of the admonishments. We do, however, have a report from the trial judge about what took place during the plea entry proceedings. Certain plea papers appellant signed and initialed also included attestations by the trial judge regarding the proceedings after appellant signed the documents. In the Waiver of Constitutional Rights, the trial judge attested:

> This document was executed by the defendant, his attorney, and the attorney representing the State, and then filed with the papers of the case. The defendant then came before me and I approved the above and the defendant entered a plea of guilty. After I admonished the defendant of the consequences of his plea, I ascertained that he entered it knowingly and voluntarily after discussing the case with his attorney. It appears that the defendant is mentally competent and the plea is free and voluntary.

In the Sex Offender Admonishments, the trial judge averred:

[1] We need not decide whether the paragraphs at issue all presented actual inconsistencies or discrepancies or whether the paragraphs were related to consequences of appellant's guilty plea. Appellant's contention is that the trial court should have made inquiries based on the inconsistent paragraphs.

> The Defendant came before me and prior to accepting a plea of guilty . . . , I have admonished the Defendant of the fact that the Defendant will be required to meet the registration requirements of Chapter 62 of the Texas Code of Criminal Procedure if the Defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter. I find that the Defendant's Attorney has advised the Defendant regarding the registration requirements under Chapter 62 of the Texas Code of Criminal Procedure. I further find that the Defendant is aware of and understands the registration requirements of Chapter 62 of the Texas Code of Criminal Procedure and that his plea is knowingly and voluntarily made understanding the consequences of the registration requirements of Chapter 62 of the Texas Code of Criminal Procedure.

With these attestations, the trial judge confirmed that during the plea proceedings, he ensured appellant was aware of the consequences of his plea and entered a guilty plea knowingly and voluntarily. Nothing in *Boykin* or its progeny requires more than this. *See Davison*, 405 S.W.3d at 690 ("*Boykin* operates like a rule of default: Unless the appellate record discloses that a defendant entered his guilty plea 'voluntarily and understandingly,' a reviewing court must presume that he did not, and rule accordingly."); *see also Aguirre-Mata v. State*, 125 S.W.3d 473, 476–77 (Tex. Crim. App. 2003); *Friemel v. State*, 465 S.W.3d 770, 776 (Tex. App.—Texarkana 2015, pet. ref'd). This and other courts of appeal have consistently rejected similar arguments to those appellant makes here. *See, e.g.*, *Venegas v. State*, No. 13-07-00396-CR, 2009 WL 4458710, at *4-5 (Tex. App.—Corpus Christi Dec. 3, 2009, pet. ref'd) (mem. op., not designated for publication); *Tatum v. State*, No. 14-04-00109-CR, 2005 WL 282880, at *1 (Tex. App.—Houston [14th Dist.] Feb. 8, 2005, pet. ref'd) (mem. op., not designated for publication); *Espinal v. State*, No. 01-00-00662-CR, 2001 WL 1663940, at *2 (Tex. App.—Houston [1st Dist.] Dec. 27, 2001, no pet.) (mem. op., not designated for publication); *Medina v. State*, No. 14-97-00859-CR, 1999 WL 587657, at *2 (Tex. App.—Houston [14th Dist.] Aug. 5, 1999, no pet.) (mem. op., not designated

for publication). Because the record reflects that the trial judge performed his duties under *Boykin*, we overrule appellant's first issue.

Assistance of Counsel

In his second issue, appellant contends that he received ineffective assistance of counsel because counsel permitted appellant to plead guilty and affirmed in the plea documents that the plea was knowingly and voluntarily given despite the inconsistencies in the admonitions. The Sixth Amendment to the United States Constitution guarantees the right to reasonably effective assistance of counsel in criminal prosecutions. U.S. Const. amend. VI; *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). Claims of ineffective assistance of counsel are evaluated under the two-pronged *Strickland* test, which requires a showing that counsel's performance was deficient and that the defendant suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *see also Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999). Essentially, appellant must show his counsel's representation fell below an objective standard of reasonableness based on prevailing professional norms and there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 693; *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011).

Any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *Thompson*, 9 S.W.3d at 813. In the majority of cases, the record on direct appeal is simply undeveloped and cannot adequately reflect the alleged failings of trial counsel. *Jackson v. State*, 973 S.W.2d 954, 957 (Tex. Crim. App. 1998). A proper record is best developed in a habeas corpus proceeding or in a motion for new trial hearing. *DeLeon v. State*, 322 S.W.3d 375, 381 (Tex. App.—Houston [14th Dist.] 2010,

pet. ref'd).

As discussed above, the record here does not reflect that appellant entered his plea involuntarily or unknowingly. To the contrary, the record supports the conclusion that despite any inconsistent statements in the written admonitions, the trial court determined that appellant was aware of the consequences of his plea and entered a guilty plea knowingly and voluntarily. Accordingly, the record does not support appellant's assertions that his counsel permitted him to plead guilty unknowingly or involuntarily, that counsel's performance was deficient, or that appellant suffered prejudice as a result. *See Thompson*, 9 S.W.3d at 812-13. We overrule appellant's second issue.

We affirm the trial court's judgment.

/s/ Frances Bourliot
Justice

Panel consists of Justices Bourliot, Hassan, and Poissant.
Do Not Publish — TEX. R. APP. P. 47.2(b).