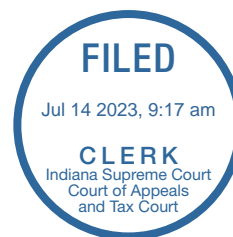


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Maurice Amos, Jr.,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

July 14, 2023

Court of Appeals Case No.
23A-PC-77

Appeal from the Grant Superior
Court

The Honorable Mark E. Spitzer,
Judge

Trial Court Cause No.
27C01-1905-PC-8

Memorandum Decision by Judge Riley
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Petitioner, Maurice Amos (Amos), appeals the post-conviction court's denial of his petition for post-conviction relief.

[2] We affirm.

ISSUE

[3] Amos presents this court with one issue, which we restate as: Whether the post-conviction court's conclusion that Amos' waiver of his right to a jury trial was knowing, voluntary, and intelligent was clearly erroneous.

FACTS AND PROCEDURAL HISTORY

[4] On June 26, 2007, the State filed an Information, charging Amos with domestic battery in the presence of a child less than sixteen years of age, a Class D felony; two Counts of battery resulting in bodily injury, Class A misdemeanors; battery, a Class B misdemeanor; interference with the reporting of a crime, a Class A misdemeanor; and criminal mischief, a Class B misdemeanor. On July 2, 2007, the trial court held an initial hearing on the charges where Amos was informed that "if you plead guilty at any time that you're gonna be waiving or giving up these important Constitutional [and] [s]tatutory rights" and that "[y]ou have the right to a trial by jury." (Initial Hearing Transcript p. 3).

[5] On October 9, 2007, the trial court held Amos' guilty plea hearing. Prior to taking Amos' plea, the trial court conducted a mass advisement of rights which Amos and other defendants who were pleading guilty that day attended. The

trial court advised Amos that he would be waiving important constitutional and statutory rights. The trial court further advised Amos that one of those rights was the right to have the State prove his guilt “at a trial[.]” (Exh. Vol. p. 89). In its mass advisement, the trial court did not specifically inform Amos that he had a right to have the State prove his guilt at a *jury* trial. After the mass advisement of rights, the trial court held Amos’ guilty plea hearing. Amos filed a copy of his plea agreement with the State, as well as a document entitled “Plea Agreement (Motion to Enter a Plea of Guilty)” (the Motion). (Appellant’s App. Vol. II, pp. 56-59). The Motion, which was signed by Amos, contained the following averment:

I understand that I may, if [I] so choose, plead not guilty to any offenses charged against me, and that if I choose to plead not guilty the Constitution guarantees me . . . [t]he right to a speedy and public trial by jury.

(Appellant’s App. Vol. II, p. 58). The Motion was also signed by Amos’ attorney, who attested that he had discussed the Motion with Amos and that, in his opinion, Amos’ offer to plead guilty was “voluntarily and understandingly made.” (Appellant’s App. Vol. II, p. 59). At the beginning of Amos’ guilty plea hearing, Amos confirmed for the trial court that he had heard and had no questions about the rights that had been read to him during the earlier mass advisement. The trial court asked Amos if he had gone over the Motion with his attorney and if he had signed that document, and Amos replied that he had done both of those things. The following colloquy then took place:

Trial Court: Do you understand, sir, if you plead guilty today that you're gonna be waiving or giving up the rights that I read in court and the rights contained in this motion that you signed?

Amos: Yes

Trial Court: Are you willing to waive those rights? []

Amos: Yes.

(Exh. Vol. pp. 75-76). Amos established a factual basis for his plea, and the trial court accepted Amos' change of plea. The trial court then sentenced Amos in accordance with the terms of his plea agreement to an aggregate term of thirty-six months, with credit for two months of time-served and the remainder suspended to probation.

[6] On May 3, 2019, Amos filed a pro se petition for post-conviction relief that he amended on April 27, 2022. Amos claimed that his October 9, 2007, guilty plea was not knowing, voluntary, or intelligent because he had not been advised that he was waiving his right to a jury trial with his plea. On August 2, 2022, the post-conviction court held an evidentiary hearing on Amos' petition.¹ Amos' testimony regarding the circumstances surrounding his guilty plea was very brief, in that he could only remember that the terms of his plea agreement were read into the record. The post-conviction court allowed the parties to submit proposed findings of fact and conclusions thereon in lieu of briefing or additional argument.

¹ This was a consolidated hearing to address the instant post-conviction matter and an unrelated post-conviction proceeding in Cause Number 27C01-1701-PC-4.

[7] On December 13, 2022, the post-conviction court issued its order, denying Amos relief. The trial court took judicial notice of the transcript of Amos' initial hearing which it noted had been made part of the record. The trial court entered the following relevant findings and conclusions:

At the post-conviction relief hearing, Amos acknowledged that he had little memory of the plea hearing that had occurred nearly fifteen years prior. He also conceded that the transcript of the record from the plea hearing would be the best indication of what happened that day. Notably, he did not testify that he was unaware that he was waiving his right to jury trial, nor did he testify that he would not have pled guilty if [the trial court] had included reference to "jury trial" when giving the mass advisement of rights. Thus, there is certainly no evidence that his plea was not knowing or voluntary due to the defect in the rights.

(Appellant's App. Vol. II, p. 53). The post-conviction court found that Amos had been advised of his jury trial right at his initial hearing and in his Motion which he had signed and that he had indicated under questioning from the trial court that he was voluntarily waiving the rights contained in the Motion. The post-conviction court further noted that the Motion, signed by Amos' attorney, indicated that he had an opportunity to go over the Motion with Amos. As a result, the post-conviction court concluded that "while a formal advisement here may have been lacking, a review of the record establishes that Amos knew that he was waiving his right to jury trial by pleading guilty." (Appellant's App. Vol. II, p. 54).

[8] Amos now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[9] A defendant who wishes to challenge the validity of his guilty plea must do so through a petition for post-conviction relief. *Tumulty v. State*, 666 N.E.2d 394, 396 (Ind. 1996); Ind. Post-Conviction Rule 1. A petitioner seeking post-conviction relief must establish his claimed grounds for relief by a preponderance of the evidence. P-C.R. 1(5). A petitioner who appeals from the denial of his petition for post-conviction relief appeals from a negative judgment and, thus, faces a “rigorous” standard of review. *Wesley v. State*, 788 N.E.2d 1247, 1249 (Ind. 2003). In order to prevail, the petitioner must convince us that the evidence, as a whole, leads “unmistakably and unerringly” to a determination opposite to that reached by the post-conviction court. *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019). We will reverse the denial of post-conviction relief as being contrary to law “only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion.” *Dewitt v. State*, 755 N.E.2d 167, 170 (Ind. 2001).

II. *Waiver of Right to Trial by Jury*

[10] A trial by jury is a fundamental principle of our criminal justice system which is guaranteed by the United States and Indiana Constitutions. *Kellems v. State*, 849 N.E.2d 1110, 1112 (Ind. 2006). A waiver of the Sixth Amendment right to a jury trial must be “express and intelligent.” *Horton v. State*, 51 N.E.3d 1154,

1158 (Ind. 2016) (quoting *Patton v. United States*, 281 U.S. 276, 312, 50 S.Ct. 253, 263, 74 L.Ed. 854 (1930)). A waiver of our state constitutional jury trial right must be “knowing, voluntary[,] and intelligent.” *Id.* (quoting *Perkins v. State*, 541 N.E.2d 927, 928 (Ind. 1989)). Thus, under *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.E.2d 274 (1969), before accepting a defendant’s guilty plea, the trial court must be assured that the accused is aware of his right against self-incrimination, his right to be tried by a jury of his peers, and his right to confront the accusers against him. *Dewitt*, 755 N.E.2d at 171. However, *Boykin* does not require either a formal advisement to the defendant that he will waive certain constitutional rights with his plea or a formal waiver of those rights by the defendant. *Id.* “*Boykin* only requires a conviction to be vacated if the defendant did not know *or* was not advised at the time of his plea that he was waiving his *Boykin* rights.” *Id.* (emphasis in the original); *see also Youngblood v. State*, 542 N.E.2d 188, 189 (Ind. 1989) (“[O]nce a state prisoner has demonstrated that the plea taking was not conducted in accordance with *Boykin*, the state may, if it affirmatively proves in a post-conviction hearing that the plea was voluntary and intelligent, obviate the necessity of vacating the plea.”).

[11] Amos contends that his guilty plea must be vacated because he proved at the post-conviction hearing that he was not advised at his guilty plea hearing that he was waiving his jury trial right and because the State did not prove that he otherwise knew of that right before pleading guilty. We cannot agree. Although the trial court did not advise Amos of this specific right in its mass

advisement prior to taking Amos' plea, other evidence provided the post-conviction court with a reasonable inference that Amos was, nevertheless, aware of his jury trial right that he was waiving with his plea. At Amos' initial hearing,² the trial court specifically advised him that he had a right to be tried by a jury which would be waived with his plea. *See Dewitt*, 755 N.E.2d at 171 (considering the advisement of the jury trial right at Dewitt's arraignment as part of the evidence indicating that he knew of this right, despite receiving inadequate *Boykin* advisements prior to pleading guilty). In addition, the Motion, which Amos went over with his attorney and signed, provided that he had a right to a jury trial if he did not plead guilty, and, when questioned by the trial court directly prior to changing his plea, Amos agreed that he was voluntarily waiving the rights outlined in the Motion. Thus, there was evidence supporting the post-conviction court's conclusion that, even if the mass advisement of rights provided prior to his change of plea hearing was deficient, Amos knew of his jury trial right that he would waive with his plea. As such, the post-conviction court's conclusion is not clearly erroneous. *See Gibson*, 133 N.E.3d at 681.

² Amos contends that the transcript of his initial hearing was not before the post-conviction court and, therefore, that the post-conviction court erred in relying on it to deny relief. The initial hearing transcript was filed in this matter on December 12, 2020, the same day the post-conviction court entered its order denying relief and noted that it took judicial notice of the initial hearing transcript. A trial court may take judicial notice of records of a court of this state at the request of a party or sua sponte at any stage in a proceeding. Ind. Evidence Rule 201(b)(5), (c), and (d). The transcript was properly before the post-conviction court, and it was available to Amos for any motion to correct error he wished to file and for the preparation of the instant appeal. We find no error in the post-conviction court's taking of judicial notice of the transcript of Amos' initial hearing.

[12] Amos contends that the State did not prove that he knowingly waived his jury trial right because he did not sign his plea agreement and because the State did not ask him at the post-conviction hearing if he understood that he was waiving his right to a trial by jury prior to his changing his plea. However, Amos has not separately challenged the validity of his guilty plea due to his unsigned plea agreement, and the State was not required to ask Amos about his understanding of his jury trial right, where Amos testified he could not remember the details of the circumstances surrounding his guilty plea and given the other circumstantial evidence which we have already discussed which indicated his knowledge of the right.

[13] In addition, we find Amos' reliance on *State v. Lime*, 619 N.E.2d 601 (Ind. Ct. App. 1993), *trans. denied*, to be unpersuasive. Lime pleaded guilty in two separate causes, both times signing a standard waiver of rights form, and the trial court asked Lime if he had read the waiver form, if he was aware of the rights he was waiving, and if he had any questions about those rights. *Id.* at 602-03. This court affirmed the grant of relief, finding that we could not say with definite and firm conviction that the post-conviction court had made a mistake in concluding that Lime had not knowingly and voluntarily waived his *Boykin* rights. *Id.* at 604-05. *Lime* is factually distinguishable because here, apart from signing the Motion and affirming he was waiving the rights contained therein, Amos was expressly advised of his right to a jury trial at his initial hearing and because both he and his counsel affirmed to the trial court

that they had together reviewed the Motion in which Amos acknowledged his right to a jury trial if he did not plead guilty.

[14] Neither can we credit Amos' argument that the post-conviction court applied the wrong burden of proof because it found that it was not "believable that Amos was unaware of the fact that he was waiving his right to a trial by jury when he pled guilty." (Appellant's App. Vol. II, p. 53). Amos cites this court's decision in *Bautista v. State*, 163 N.E.3d 892, 898-99 n.6 (Ind. Ct. App. 2021), wherein this court held that the post-conviction court had erred as a matter of law when it found that Bautista had failed to prove by a preponderance of the evidence that he did not understand his *Boykin* rights. The *Bautista* court found that the post-conviction court had effectively improperly shifted the burden to Bautista to prove he did not understand his *Boykin* rights, whereas he was only required to show that he had not been properly advised of his *Boykin* rights. *Id.* Here, the post-conviction court found that the trial court's advisement was deficient, thus impliedly recognizing that Amos had met his burden of proof. The post-conviction court then went on to conclude that, despite the deficient advisement, the State had presented other evidence that showed Amos' knowledge of his jury trial right that he waived, making his argument unbelievable. The post-conviction court's observation that Amos had not testified that he was unaware that he was waiving his jury trial right with his plea and that there was "certainly no evidence that his plea was not knowing or voluntary" were simply findings that there was no evidence to counter the

State's affirmative evidence that Amos was aware of his jury trial right.³ (Appellant's App. Vol. II, p. 53). Therefore, the post-conviction court applied the correct burden of proof and did not improperly charge Amos with proving his lack of knowledge of his jury trial right.

CONCLUSION

- [15] Based on the foregoing, we conclude that the post-conviction court's determination that Amos validly waived his right to a jury trial was not clearly erroneous.
- [16] Affirmed.
- [17] Bradford, J. and Weissmann, J. concur

³ We acknowledge that a defendant who was not advised of his *Boykin* rights and who was unaware of those rights need not show prejudice to obtain reversal. *Slone v. State*, 590 N.E.2d 635, 638 (Ind. Ct. App. 1992). Therefore, we agree with Amos that the post-conviction court's finding that Amos did not testify that he would have changed his plea had he known he was waiving his jury trial right was unmerited; however, Amos has not demonstrated how he was prejudiced by this finding, where the post-conviction court did not conclude that Amos was unaware of his jury trial right.