1970

Samantha Kay Frye Farrell v. John W. Turner, Warden, State Prison : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

SAMANTHA KAY FRYE FARRELL,

Plaintiff-Appellant,

-vs-

Case No. 12163

JOHN W. TURNER, Warden,
Utah State Prison,

Defendant-Respondent.

BRIEF OF APPELLANT

An Appeal From the Judgment of the
Third Judicial District Court, State of Utah
the Honorable Stewart M. Hanson, Judge

RONALD N. BOYCE
College of Law
University of Utah
Salt Lake City, Utah

Attorney for Appellant

DAVID S. YOUNG
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah

Attorney for Respondent

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STATEMENT OF THE NATURE OF CASE

The instant appeal is from a decision of the Third Judicial District Court, in and for Utah County, State of Utah, the Honorable Stewart M. Hanson, presiding, denying the appellant's complaint for a Writ of Habeas Corpus.

DISPOSITION IN THE LOWER COURT

A Petition for Writ of Habeas Corpus was filed in the Third Judicial district, in and for Salt Lake County, State of Utah on April 16, 1970. A hearing on the merits was held before the Honorable Stewart M. Hanson on May 26, 1970. Findings of Fact and Conclusions of Law were waived by stipulation of counsel. An order was entered on June 2, 1970

ismissing appellant's petition. It is from this ismissal the present appeal is taken.

RELIEF SOUGHT ON APPEAL

The appellant submits the Court should reverse he trial court's decision and order that the appellant e granted a writ of habeas corpus.

STATEMENT OF FACTS

The hearing before the Honorable C. Nelson Day, ifth Judicial District, June 12, 1969, is designated ereinafter as the Arraignment Hearing.

The hearing before the Honorable C. Nelson Day, ifth Judicial District, June 25, 1969, is designated ereinafter as the Sentencing Hearing.

The Hearing before the Honorable James P. McCune, ifth Judicial District, August 12, 1969, is designated as the Revocation Hearing.

The hearing before the Honorable Stewart M. Hanson, Third Judicial District, May 26, 1970, is designated hereinafter as the Habeas Corpus Hearing.

On June 12, 1969 appellant pleaded guilty to the charge of furnishing implements to aid a prisoner to escape in the Fifth District Court of Iron County. The violation of Section 76-50-6 Utah Code Annotated 1953 was alleged to have taken place on May 23, 1969

at the Iron County Jail where the appellant's husband Douglas E. Farrell was incarcerated while awaiting sentencing for the crime.

At the time of the arraignment of the appellant she was advised that she had a right to counsel and that an attorney would be appointed at the state's expense if she could not provide her own attorney. (Arraignment Hearing, p. 3, lns. 1-18). The appellant informed the court that she did not desire the services of counsel. (Arraignment Hearing, p. 4, lns. 3-12) She was then informed that the charge against her was "serious" and that she faced several years of imprisonment upon conviction. The information was read to appellant charging her with supplying "hack saw blades" to her husband in order that he could escape from jail. The plaintiff then immediately entered a plea of guilty. (Arraignment Hearing, p. 5, ln. 4). Although the court summarized the charges as found in the information the judge did not question the plaintiff as to the facts or circumstances surrounding the offense. Neither did he inquire into any circumstances surrounding the guilty plea.

The court made arrangements for a pre-sentence report, and the plaintiff's husband, present during the entire proceeding, urged the court to allow his wife to reconsider the consequences of the plea, in that she apparently was under the impression that by pleading guilty she would be sentenced to prison that day and could begin serving the sentence immediately. (Arraignment Hearing, p. 6, lns 15-20) The court said, "Mrs. Farrell, if that is (sic) the reason you turned down a lawyer is because you thought I would send you to prison today, I want you to reconsider that, if that's the reason you stated you didn't want to be represented by an attorney." (Arraignment Hearing, p. 6, lns. 20-24) The plaintiff replied, "That's the reason." (Arraignment Hearing, p. 6, lns. 25-26).

After learning this new information the court appointed counsel for the appellant and recessed for two hours to enable consultation with Mr. Christian Ronnow, appellant's appointed attorney and also the attorney who represented her husband at his arraignment. Mr. Ronnow informed the court upon resumption

of the hearing, "Well, Your Honor, we have consulted and I have a real concern about her plea of guilty. I feel she does have a defense." (Arraignment Hearing, p. 8, lns. 7-9). It was then agreed that should Mr. Ronnow, upon further consultation with the appellant, conclude that the plea was wrongly entered he would be able to withdraw the plea within three days. (Arraignment Hearing, p. 8, lns. 15-30). The court then ordered the pre-sentence investigation to commence in the event sentencing would be imposed.

At the hearing of June 12 the appellant was never advised of her right to have a trial by jury, her right to confront her accusers, her right to call witnesses in her defense, and her right against self-incrimination. In addition, she was not informed of the necessary elements that comprised the crime with which she was charged, questioned as to the facts surrounding the alleged crime, or questioned as to her reasons for pleading guilty. This last point is demonstrated by the fact that until her husband had interrupted the proceedings, the court was unaware that the appellant had waived counsel in order to facilitate immediate imprisonment.

Nothing in the record indicates that appellant during the interim between June 12 and June 25, was informed of the elements of the crime with which she was charged or the rights she was entitled to should she desire trial. Information was not given to the appellant during the June 25 hearing on any of the beforementioned issues. The court never questioned or examined the facts or motivations of this plea or informed the appellant of her right to trial by jury, right to face her accusers, right to call her own witnesses, and right to remain silent. The entire proceeding was not concerned with the sentence to be imposed as a result of the guilty plea entered on June 12. The appellant and her counsel made statements in mitigation only, and at no time discussed the actual facts of the crime or her understanding of its elements or defenses to the crime. The appellant was adjudged guilty at the hearing of having furnished implements to aid a prisoner to escape on the basis of her original plea of guilty. She was sentenced to three years imprisonment, the sentence was suspended, and the appellant was placed on probation.

On August 2, 1969 the appellant again appeared before the Fifth District Court of Iron County to show cause why her probation should not be revoked. (Revocation Hearing, p. 3, lns. 14-27). Although she was informed of her right to counsel she requested none be appointed and represented herself. She was then informed that should she be determined as having violated her probation that the original sentence would be executed. At this time she acknowledged that she had pled guilty to a charge of being intoxicated in public on July 11, 1969. After discussing the matters concerning this charge the court ruled that this act constituted a violation of her probation agreement and subsequently sentenced the plaintiff to three years maximum in the Utah State Prison.

On May 26, 1970 a hearing on appellant's application for habeas corpus was held in the Third District Court of Utah. By an order signed on June 2, 1970 Judge Stewart M. Hanson dismissed the complaint without opinion. The present appeal is taken from his dismissal.

ARGUMENT

POINT I

APPELLANT WAS DENIED HER CONSTITUTIONAL RIGHT OF DUE PROCESS OF LAW AND DID NOT MAKE A KNOWING, VOLUNTARY, AND INTELLIGENT PLEA OF GUILTY BECAUSE THE SENTENCING COURT FAILED TO EXAMINE INTO THE FACTUAL BACKGROUND OF THE CHARGE AND TO INSTRUCT APPELLANT OF THE NATURE OF THE CHARGE AGAINST HER, THE ELEMENTS COMPRISING THE CHARGE, AND THE CONSTITUTIONAL RIGHTS WHICH ARE WAIVED BY A PLEA OF GUILTY.

Appellant appeared before the Fifth District Court of Iron County on June 12, 1969 for arraignment and plea to the charge of violating Section 76-50-6 Utah Code Annotated 1953. Because this and other hearings occurred after the United States Supreme Court had delivered its decision of Boykin v. Alabama, 395 U.S. 238 (1969), the holdings of that case are applicable to the arraignment and sentencing proceedings of this case.

In Boykin, petitioner was a 27 year old Negro who had pleaded guilty to five counts of armed robbery. The question of the punishment was submitted to a jury which subsequently recommended he be sentenced to death. The Alabama Supreme Court affirmed the conviction and sentence although three justices on their own motion dissented on the grounds that the record

was inadequate to show that petitioner had intelligently and knowingly pleaded guilty. Boykin v. State, 281 Ala. 659, 207 So.2d 412, 415 (dissenting opinion). The United States Supreme Court held that acceptance of petitioner's guilty plea constituted reversible error because the record did not disclose that the petitioner had voluntarily, intelligently, and understandably entered his plea of guilty. The Court held that the due process clause of the Fourteenth Amendment required the reversal of petitioner's conviction, since a defendant who enters a guilty plea simultaneously waives several constitutional rights including the privilege against compulsory self-incrimination, Mallory v. Hogan, 378 U.S. 1 (1964), the right to trial by jury, Duncan v. Louisiana, 391 U.S. 145 (1968), and the right to confront one's accusers, Pointer v. Texas, 380 U.S. 400 (1965). "We cannot presume a waiver of these three important federal rights from a silent record." 395 U.S. at 243. In addition, the Court also imposed the requirement that the defendant must understand the law in relation to the factual context of the case.

> Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." 395 U.S. at 243 n. 5 quoting McCarthy v. United States, 294 U.S. 459, 466 (1969).

Application of the Boykin standards to the instant case reveals that the arraigning and sentencing court did not take the required steps necessary to insure that appellant's guilty plea was knowingly and intelligently made. There is no evidence in the record to indicate that the judge,either during the June 12 arraignment hearing or during the June 25 sentencing hearing, inquired into the factual basis of the plea as relating to the alleged violation, inquired into the motivations of the plea itself, or advised appellant that a guilty plea abolishes all rights of trial by jury, confrontation of witnesses, and self-incrimination. By failing to follow the Boykin mandates the trial court seriously prejudiced appellant's plea. The record of the habeas corpus proceeding of May 26, 1970 indicates that at least four areas of importance to the appellant's plea were overlooked in the

arraignment and sentencing hearings.

First, a hearing following Boykin requirements would have revealed that appellant acted in large part because of the pressure exerted by her husband's pleas and demands. This was shown in the following dialogue.

(Habeas Corpus Hearing, p. 4, lns. 9-17).

> Q. Mrs. Farrell, will you try to remember as best you can the contents of those letters [written by her husband] as to anything your husband asked you to do?
>
> A. My husband threw out the letters, out of the jail, and told me to break into the jail and get the keys and unlock the door and I told him at that time I was afraid.
>
> Q. What did he advise you then?
>
> A. He told me if I didn't do it he would be in prison for twenty years.

Section 76-1-41 Utah Code Annotated 1953 provides:

> Who Are Capable of Committing Crime--All persons are capable of committing crimes, except those belonging to the following classes:
>
> . . . .
>
> (8) Married women, unless the crime is punishable with death, acting under the threats, command or coercion of their husbands.
>
> . . . .

Thus, Section 76-1-41 codifies the common law

presumption that a woman who commits a crime upon the instructions of her husband does so under duress. See O'Donnell v. State, 117 P.2d 139 (Okla. Ct. Crim. App. 1941); 4 ALR 266; 71 ALR 1116, 1118. Courts have generally been unanimous in holding that the weight to be given to the "married woman" presumption is a factual matter for the jury to determine in light of all the circumstances present. In State v. Carpenter, 176 P.2d 919 (Idaho 1947) a factual situation very similar to the instant case occurred. In that case a woman was charged with aiding her common law husband to escape from jail by supplying him with hacksaw blades. On appeal the defendant raised the presumption provided by 17-201 Idaho Code Annotated 1947 which is identical to the Utah statute. The court in that case said, "The question of conjugal status and what extent, if any, appellant acted under threats vicariously acquiesced in by Pease [her common law husband], or was dominated by his commands or coercion, were questions of fact to be determined by the jury." Id at 920-21. See also State v. Cauley, 94 S.E.2d 915 (N.C. 1956). Of course in a plea of guilty there is no jury. However,

the sentencing court under Boykin has the same obligation to examine the factual context of the plea including the presumption of duress as would a jury. This examination was not performed in the case at bar.

It should be noted that appellant's husband exerted pressure both before and after the alleged commission of the offense. In addition to the fact that both appellant and her husband had the same counsel (Habeas Corpus Hearing, p. 8, lns. 9-23) it is also evident from the record of the June 12 hearing that appellant's husband had discussed the plea with her and that he was well aware of her plea intentions. (Arraignment Hearing, p. 6, lns. 15-19).

A recent Utah federal district decision illustrates the necessity of appraising a defendant of all the necessary elements which comprise an offense in order that he may make an intelligent plea. In Belegarde v. Turner, 307 F. Supp. 936 (D. Utah 1969) the plaintiff had been convicted of second degree burglary and had initiated a habeas corpus action on grounds that the guilty plea he entered was not

knowingly or intelligently made. Specifically, the plaintiff alleged that the sentencing court did not inform him of the difference between daytime and nighttime burglary which was extremely relevant to his plea because of the time element of the crime. The district court granted the motion using the Boykin criteria that a defendant must understand the nature of the offense as well as its defenses. The court said,

> Unlike the record in Boykin, the record before us here is not silent, but it is hardly better and in some respects it is worse, than a silent record. Without leaving the matter to a matter of presumption or supposition, perhaps consistent with the idea that advice actually was given, the record here expressly shows that the plaintiff did not have explained to him the nature of the charge, anything about possible defenses, the significance of nighttime burglary as compared to daytime burglary and other matters which would be necessary to understand in order to render a plea knowledgeable. The only vital thing the plaintiff was told was the extent of the possible punishment for second degree burglary, but in view of the peculiar circumstances of this case it was rather essential that the plaintiff have explained to him also what the punishment for third degree burglary would have been and, indeed, that there was such a thing as third

degree burglary involving daytime activity, i.e., activity after sun-up. Id. at 940 (emphasis added).

See also Ernst v. State, 170 N.W.2d 713, 718-19 (Wis. 1969). The element of capacity in the case at bar is analogous to the daytime-nighttime distinction of the Belegarde case.

Finally, the American Bar Association in its MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PLEAS OF GUILTY (approved draft 1968 hereinafter MINIMUM STANDARDS) also recognizes the need to examine the factual context of a guilty plea. Section 1.6 states,

> "Not withstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as may satisfy it that there is a factual basis for the plea."

In elaborating the need for this section, the official commentary states,

> "The defendant may not completely understand what mental state and acts constitute commission of the offense charged, and it may be that his conduct is not as serious as that charged or that he has a valid defense to the charge." Id. at 31.

The defense of lack of capacity must be made timely, or it is lost; appellant's conviction cannot

now be attacked on the ground that she lacked capacity. Nevertheless, section 76-1-41 Utah Code Annotated 1953, raises a presumption of duress in appellant's case, and had the court fulfilled its duty under Boykin it must be presumed the matter of duress would have become apparent. The court was required to canvass the facts with appellant and give her to understand the applicable law. Had the court elicited the facts, it must be presumed that the latter would have come to light, and had the court instructed appellant on the law, it was constrained to tell her that capacity is an element of the offense and that lack of capacity and duress is a defense. In any case, had the court made sufficient inquiry it would have discovered the influence of the husband had been exerted at all times relevant to the making of the plea; under such circumstances, "the utmost solicitude of which courts are capable" required by Boykin would have necessitated reopening the matter of the plea at some time after the lunch recess on June 12 in order to give appellant a chance to make her plea free of the influence of her husband, and with full understanding of her defense.

Appellant was under duress at all times relevant to the making of the plea. It was the duty of the court to take steps to dispel duress and to record those steps in the record. Had the court taken the steps required by Boykin it could have discovered that appellant was under duress and it could have given her an opportunity to knowingly and intelligently make her plea. It did not do so.

Second, had the sentencing court made in-depth inquiries as Boykin required it would have determined that the principal reason for the guilty plea and the failure to request counsel was plaintiff's fear of being left alone while her husband was in prison. This is evident from the following discourse:

(Habeas Corpus Hearing, p.5, lns. 17-24).

A. I know I told them I didn't want the attorney out there.

Q. Why did you tell them you didn't want the attorney?

A. Because I wanted to be with Doug. I didn't have no place to go.

Q. You thought you would be with him if he went to prison?

A. Well, no, I didn't think I would be right with him, but I was scared, and I thought, well, at least I will have some place to sleep at nights and something to eat.

* * * * *

(Habeas Corpus Hearing, p.7, lns. 2-10)

Q. Did Mr. Ronnow ever advise you he thought you ought to plead not guilty and go to trial?

A. He said at one time, if I would plead not guilty he was quite sure I would be released because there was no evidence I had committed a crime.

Q. In spite of that advice you plead guilty?

A. Because just like I said, I didn't have no place to remain. I didn't know what to do, and I was scared, and I decided I might as well go to prison.

It would seem that motives other than guilt greatly contributed to the guilty plea. This fear of being left alone would have become apparent had the court made the proper investigation. Boykin and ABA standards were formulated to help prevent guilty pleas from being entered for motives unrelated to actual guilt. The ABA Commentary to Section 1.6 states,

> A guilty plea may be entered by a psychiatrically disturbed person; unlike a trial of a criminal case, the brief guilty plea process affords the judge little opportunity to detect incompetency unless the defendant is obviously retarded or grossly psychotic. A clearly rational defendant may enter a false plea in the hope of achieving some goal, as where an innocent defendant is seeking to protect another person. These and

similar situations, although rare, have been observed to happen from time to time. Newman, Conviction: The Determination of Guilt or Innocence Without Trial, ch. 2 (1966) . . . Pollack, The Errors of Justice, 284 Annals 115 (1952); Hoffman, What Next in Federal Criminal Rules? 21 Wash. & Lee L. Rev. 1, 10 (1964). ABA, Minimum Standards at 31-32.

Clearly, the motives behind appellant's plea should have been examined. This failure to examine these motives directly violated the Boykin standards.

Third, the appellant at the time of the sentencing hearing was unclear as to the crime she was charged with and did not know the elements necessary for the crime.

(Habeas Corpus Hearing, p. 6, lns. 16-29)

Q. Do you understand that, have (after?) you entered your plea of guilty, was the charge against you providing implements to escape?

A. No, sir; I did not.

Q. Do you know what the elements of this crime are?

A. I do now, but I didn't then.

Q. When did you find out what they were?

A. After I was in prison.

Q. Who advised you what they were?

A. I talked to Mr. Ronnow, and he told me I had not been put in prison for aiding and abetting, but I had been put in prison

for furnishing implements, and furnishing implements was a crime that was punishable by prison, but aiding and abetting was not a crime punishable by going to prison.

One commentator has suggested a way of avoiding ny misunderstanding as to the offense charged.

> "[T]he judge should always very carefully confront the defendant with the exact nature of the charge. . . . In many cases the indictment, which is usually couched in technical language, is more understandable to the defendant if the charge is explained to the defendant by the judge in simple everyday language." Thompson, The Judge's Responsibility on a Plea of Guilty, 62 W. Va. L. Rev. 213, 220 (1969).

n the instant case although the court did read the ndictment to the plaintiff (Arraignment Hearing, . 3, lns. 1-17), it did not explain the exact nature f the charge or of what elements the offense conisted, in an understandable fashion for the ppellant.

Even before Boykin was decided many courts equired the criteria of Boykin to be observed during he plea of guilty for sound policy reasons. The hird Circuit, for example, in United States ex rel

rosby v. Brierley, 404 F.2d 790 (3rd Cir. 1968)

aid,

> We have heretofore spoken in a challenge to a guilty plea entered in a Pennsylvania court: "[T]he question whether the plea of guilty is voluntarily and intelligently made can only be determined if it is shown on the record what comprehension the accused had of the nature and elements of the charge against him, of the defenses available to him, and of the consequences which might flow from a plea of guilty. . . . and these facts should appear on the record at the time the plea is entered." United States ex rel. McDonald v. Commonwealth of Pennsylvania, 343 F.2d 447 at 451 (1965). Id. at 795 (emphasis added).

e also Pearson v. Turner, 306 F. Supp. 825

. Utah 1969) where the Utah federal district court

anted habeas corpus when the state failed to show

at the plaintiff understood the seriousness of the

arge in the sentencing hearing.

Although the court in the instant case made an

fort to inform the appellant of the charge against

r, it did not make sufficient inquiry into her

derstanding as required by Boykin. Had such inquiry

en made the court would have realized that further

planation of the charge and its elements was

essary for the appellant's intelligent compre-

nsion.

Finally, the sentencing court did not advise ppellant of the consequences of pleading guilty n relation to her constitutional rights of trial y jury, confrontation, and self-incrimination. iis failure to inform appellant as required by ykin resulted in appellant's ignorance of these isic rights -- especially the right against self- icrimination.

(Habeas Corpus Hearing, pp. 9-10, lns. 16-3)

Q. Do you understand you have the right to remain silent in such a trial?

A. Such as now?

Q. Such as a trial for the crime you may be charged with in a felony case, such as in the original case, if you had not plead guilty?

A. No, sir, I didn't understand that then, sir.

Q. But you do understand that now?

A. You mean that I would not have to answer your questions if I didn't want to, is that what you mean?

Q. Do you understand if you were charged with a felony you would not have to take the stand and testify against yourself?

A. Now since you just said it I have learned this.

Q. That is the first time you have learned it?

A. Yes.

Q. You didn't know it yesterday?

A. No, sir, I did not.

As previously stated, Boykin expressly commands at the three constitutional rights of trial by ry, confrontation, and self-incrimination be early explained to a defendant before the guilty ea is accepted. This explanation was not made by e court in this case. Without such explanation ignorant defendant may not understand the signi- cance of the guilty plea. The Fifth Circuit has ated this proposition well:

> A plea of guilty is an abbreviated way of going down the list of possible defenses and privileges--right to counsel, jury trial, confrontation of witnesses, self-incrimination, etc.--and waiving each one. The plea represents the relinquishment of a bundle of defenses, and has no magical implications with regard to finality beyond that. The whole does not exceed the sum of its parts. If one of the component waivers was ineffective because of the inadequate knowledge upon which it was made, the defect is not cured by virtue of the fact that the waiver was made implicitly, as part of the guilty plea. United States v. Lucia, 416 F.2d 920, 923 (5th Cir. 1969).

e also MINIMUM STANDARDS § 1.4 (a) & (b).

ilure to inform the plaintiff of her constitutional hts of trial by jury, confrontation, and self-

incrimination clearly violated the Boykin mandate and caused appellant to make an unknowing and unintelligent plea.

The Washington Court of Appeals faced a case similar to the instant case. Substantially the same claims were raised on a habeas corpus proceeding as have been raised by the plaintiff. Although denying the petition in that case because the original hearing occurred before the decision of Boykin, the court said,

> Petitioner alleges that Boykin v. Alabama, 395 U.S. 238, requires this court to reverse this judgment. This court concurs in In re Miller v. Rhay, Wash. App., 466 P.2d 179 (1970) wherein the Court of Appeals, Division II, held the applicability of Boykin not to be retroactive. It should be pointed out, however, that the practical effect of Boykin for those cases arising after June 2, 1969 is to impose upon the state that requirement of Rule 11 of the Federal Rules of Criminal Procedure which states that the court shall not accept a plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the pleas. McBain v. Maxwell, 466 P.2d 177, 177-178 (Wash. Ct.App. 1970) (emphasis added).

ppellant submits that the sentencing court failed o live up to this requirement and consequently ailed to adequately examine appellant as to her nderstanding, motives, and knowledge of the offense harged and of the plea itself, and further failed o advise appellant of her constitutional rights of rial by jury, confrontation, and self-incrimination.

CONCLUSION

Because the court clearly failed to follow the equirements established by the United States Supreme ourt in the Boykin decision and because such failure esulted in appellant being unable to make a knowing, oluntary, and intelligent plea, counsel respectfully ubmits that the writ of habeas corpus should be ranted.

Respectfully submitted,

RONALD N. BOYCE
Attorney for Appellant
College of Law
University of Utah
Salt Lake City, Utah 84112