

1971

**Samantha Kay Frye Farrell v. John W. Turner, Warden, State Prison
: Petition For Rehearing And Brief of Appellant In Support Of A
Petition For Rehearing**

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Recommended Citation

Petition for Rehearing, *Farrell v. Turner*, No. 12163 (1971).
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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.

PETITION FOR REHEARING AND BRIEF OF
APPELLANT IN SUPPORT OF A PETITION
FOR REHEARING

On Petition for Rehearing
From a Decision of the Utah Supreme
Court

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FILED
MAR 25 1971

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IN THE SUPREME COURT OF THE STATE OF UTAH

SAMANTHA KAY FRYE FARRELL,

Plaintiff-Appellant,

-vs-

JOHN W. TURNER, Warden,
Utah State Prison,

Defendant-Respondent.

Case No. 12163

BRIEF OF APPELLANT IN SUPPORT OF A
PETITION FOR REHEARING

RELIEF SOUGHT

The plaintiff-appellant in the above captioned case respectfully petitions this court for a rehearing and requests that this court vacate and set aside its order and judgment affirming the judgment of the lower court.

ARGUMENT

POINT I

THIS COURT FAILED TO APPLY THE STANDARDS ESTABLISHED BY THE UNITED STATES SUPREME COURT IN CONSIDERING WHETHER APPELLANT WAS DENIED HER CONSTITUTIONAL RIGHT OF DUE PROCESS OF LAW AND WHETHER A KNOWING, VOLUNTARY, AND INTELLIGENT PLEA OF GUILTY HAD BEEN MADE BECAUSE THE SENTENCING COURT HAD 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.

The United States Supreme Court in Boykin v. Alabama, 395 U.S. 238 (1969) established strict procedural requirements which must be followed by any court in accepting a plea of guilty. As noted in appellant's original brief, these requirements are (1) the defendant's motivation of entering a guilty plea must be inquired into by the court ("For, as we have said, a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." 395 U.S. at 243); (2) defendant must possess an understanding of the law in relation to the facts (395 U.S. at 243 n.5.); finally, the defendant should be informed that a guilty plea will result in waiver of trial by jury, right against self-incrimination, and right of confrontation. "We cannot presume a waiver of these three important federal rights from a silent record."

Turning now to this Court's opinion and the facts of the instant case, it becomes obvious that the

Boykin criteria were not considered in reaching the decision. First, the opinion states that "the court explained the right [to Mrs. Farrell] to have an attorney." There has never been any contention by appellant that the right to an attorney had been violated. The fact that appellant had an attorney is irrelevant to the Boykin mandate. In the Boykin case the defendant had an attorney. "Before the matter came to trial, the court determined that petitioner was indigent and appointed counsel to represent him." Id. at 239. Had Boykin only required the necessity of a court appointed attorney, the decision of the Alabama Supreme Court would have been affirmed. Instead, the Court found that the mere presence of an attorney was not sufficient to protect the rights of a defendant: rather, the presiding judge had an obligation to appraise defendant of the elements of the crime and the constitutional rights being waived in addition to inquiring into the motivations for the guilty plea.

Second, the Court has misconstrued the duress argument presented by appellant concerning Section 76-1-41 U.C.A. 1953. The Court in its opinion stated,

"By giving full weight to its words and spirits [76-1-41], it still does not aid the appellant . . . Even if she had been coerced by her husband, she departed from his coercion and committed an entirely different crime of her own choosing."

The question was never presented to this Court whether Section 76-1-41 U.C.A., 1953 could, at this stage, be used to grant appellant a writ of habeas corpus. Rather, this statute was cited principally to show that appellant had been under her husband's duress from the time the crime was committed to the time the guilty plea was entered, and to illustrate that a "lack of capacity" defense could have been raised at the trial court level to determine the exact facts surrounding her husband's coercion. The circumstances of this coercion did not even come to light until the Habeas Corpus hearing a year later. As appellant stated in her brief,

"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. . . . 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." Brief for Appellant at 16.

Thus, the Boykin mandate of inquiring into the true motivation of a guilty plea was not followed by the trial court nor discussed by this Court.

Similarly, the statement by appellant in her habeas corpus proceeding that she entered her plea of guilty so that she could be with her husband and "have some place to sleep at nights and something to eat" is another factor which should have been considered by the sentencing judge had the proper inquiry been made before the guilty plea was accepted. Although this Court said, "Even if her testimony were true, it would not justify her release from prison in this proceeding" the Court cannot mean to say that a trial court should not examine the motives of a person at sentencing. If such an investigation does not occur, a completely innocent person may be allowed to plead

guilty and be sentenced to the state prison merely because of some motivation completely unrelated to guilt. The United States Supreme Court in Boykin sought to prevent this type of injustice by requiring the trial court to inquire into the facts and motivations giving rise to the guilty plea. Under this mandate it was the duty of the trial court to make such an inquiry. Whether appellant's motivations would have influenced the trial judge's decision to accept the guilty plea is only conjectual at this stage of the proceedings. However, because appellant was denied this right of inquiry by the judge, the guilty plea standards of Boykin have been violated and the plea must be invalid.

Third, if appellant had been told by the trial court that capacity is a necessary element of the crime of supplying implements to a prisoner and if the trial court had specifically told appellant of the exact crime she was charged with, it is very possible that appellant would have decided that a guilty plea should not have been entered. Of course, this too is conjectual. But Boykin requires that the defendant understand the law in relation to the facts. Had this simple procedure been complied with, there

could be no question, either at the trial stage or the appellant stage, that appellant did not understand the nature of the crime or the elements comprising it.

Finally, the court completely ignores appellant's argument that she was not appraised of the rights which are waived when a plea of guilty is entered. The specific rights enumerated by the Boykin Court include right of trial by jury, right against self-incrimination, and right of confrontation of witnesses. It is clear from the sentencing court record and testimony at the habeas corpus proceeding that appellant was not told of the forfeiture of these rights when her guilty plea was entered. It is equally clear that appellant did not even know that she had right against self-incrimination or that it was being waived. Brief for Appellant at 22-23.

CONCLUSION

As the Court said in Boykin, "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." 395 U.S. at 242. Because of the serious consequences which follow a plea of guilty, it is up to courts throughout the country to insure that the defendant can make the guilty plea with complete knowledge of the charge

he possible defenses to it, the penalty which will
e suffered, and rights which are being waived by such
lea. The requirements of Boykin will not cause
unnecessary delay or hardship on the sentencing court.
The procedure is relatively simple and if followed
will give the defendant who is about to enter a guilty
lea the same type of protection that Miranda gives the
accused before being arrested. Because the trial court
n the instant case failed to follow the Boykin mandate
of the United States Supreme Court the appellant was
unlawfully incarcerated. It is submitted that this
court should vacate its former judgment and grant
ppellant's writ for habeas corpus. Such action will
ot only insure that the instant appellant is afforded
ustice but will also establish a state court procedure
hich will insure that future defendants will, where
roper, make voluntary, knowing, and meaningful pleas
f guilty.

Respectfully submitted,

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