

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: October 9, 2013)

ROBERTO MARTINEZ

:

C.A. No. PM 2012-2591

V.

:

:

:

STATE OF RHODE ISLAND

:

DECISION

MATOS, J. Petitioner Roberto Martinez seeks post-conviction relief from his plea of nolo contendere to a charge of assault with a dangerous weapon, in violation of Sec. 11-5-2 of the Rhode Island General Laws. Specifically, Martinez claims that: (1) the plea colloquy did not contain sufficient facts to support the plea; and, (2) he was not properly apprised of the criminal charges against him. After consideration, and for the reasons set forth in this Decision, Martinez’s application for post-conviction relief is denied.

I

Facts and Travel

On February 27, 2003, the State of Rhode Island filed a seven-count information charging Roberto Martinez (Martinez) and two co-defendants. Martinez was charged in six of the seven counts with: (1) assault with intent to murder, in violation of § 11-51-1; (2) assault with a dangerous weapon (ADW), in violation of § 11-5-2; (3) discharge of a firearm from a motor vehicle, in violation of §11-47-61; (4) discharge of a firearm while committing a crime of violence, in violation of § 11-47-3.2(b)(2); (5) conspiracy to commit murder, in violation of § 11-1-6 ; and (6) possession of a loaded rifle in a motor vehicle, in violation of § 11-47-51. On

October 27, 2004, Martinez appeared for arraignment and entered a plea of not guilty. On October 7, 2005, Martinez appeared before the trial court, with counsel, to enter a plea of nolo contendere.

At the onset of the plea hearing, the clerk recited all charges pending against Martinez, and the State represented that it would be dismissing all charges, except for count 2, ADW, in exchange for Martinez's plea. See Hr'g. Tr. at 1-2, Oct. 7, 2005. The trial justice advised Martinez of the rights he was giving up, as well as the implications that could follow as a result of his plea. (Hr'g. Tr. at 2-7.) In turn, the State recited what it would prove if the matter had proceeded to trial as follows:

If this case went to trial, the State would be prepared to prove that this defendant, he was with a group of other people, Carlos Arias and Edwin Santos, and they shot at and assaulted Ramon Rodrigues. He was part and parcel of it. Whether he was the actual shooter, he was part of the group. And that's assault with a dangerous weapon.

(Hr'g. Tr. at 5.) The trial justice then asked Martinez if he had heard, understood, agreed and admitted to the facts, all of which he answered in the affirmative. (Hr'g. Tr. at 6.) Martinez was sentenced to a ten-year probationary period, restitution, and two no contact orders. Martinez stated that he understood and accepted the sentence and had nothing more to say. (Hr'g. Tr. at 7.)

On May 7, 2012, almost seven years later, Martinez filed an application for post-conviction relief seeking to vacate his plea. Specifically, Martinez argues that there was no factual basis to find that he had done anything for which criminal culpability could be assigned. He also claims that the nature of the charge was not effectively conveyed to him.

II

Standard of Review

“General Laws 1956 § 10-9.1-1 creates a post-conviction remedy ‘available to any person who has been convicted of a crime and who thereafter alleges either that the conviction violated the applicant’s constitutional rights or that the existence of newly discovered material facts requires vacation of the conviction in the interests of justice.’” Hingham v. State, 45 A.3d 1180, 1183 (R.I. 2012) (quoting DeCiantis v. State, 24 A.3d 557, 569 (R.I. 2011)). An applicant for post-conviction relief bears “the burden of proving, by a preponderance of the evidence that [post-conviction] relief is warranted” in his or her situation. See Anderson v. State, 45 A.3d 594, 601 (R.I. 2012) (quoting Mattatall v. State, 947 A.2d 896, 901 n.7 (R.I. 2008)). The reviewing court shall view the case under the totality of the circumstances and only vacate the plea if there are “no facts that could have satisfied the trial justice that a factual basis existed for a defendant’s plea.” Burke v. State, 925 A.2d 890, 893 (R.I. 2007); see also Camacho v. State, 58 A.3d 182, 188 (R.I. 2013).

Rule 11 dictates that a court shall not accept a guilty plea without first “addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and the direct consequences of the plea.” Super. R. Crim. P. 11; see also State v. Feng, 421 A.2d 1258, 1266 (R.I. 1980). While Rule 11 serves as a safety net “to ensure that there is compliance with constitutional requirements,” it is not intended to “serve as a trap for those justices who fail to enumerate each fact relied on to accept such a plea.” See Camacho, 58 A.3d at 186; State v. Frazar, 822 A.2d 931, 936 (R.I. 2003) (quoting Feng, 421 A.2d at 1269)). In addition, if a petitioner claims that Rule 11 was not satisfied, he must “bear the

burden of proving by a preponderance of the evidence that [he] did not intelligently and understandingly waive [his] rights.” State v. Figueroa, 639 A.2d 495, 498 (R.I. 1994).

III

Analysis

Martinez argues that his underlying plea of nolo was not sufficient to satisfy Rule 11 because there was no factual basis for the trial justice to accept the plea. Specifically, Martinez claims that the prosecutor’s recitation that “he was with a group of other people, Carlos Arias and Edwin Santos, and they shot at and assaulted Ramon Rodriguez,” established no more than Martinez’s mere presence at the scene of the crime. (Hr’g. Tr. at 5.)

Section 11-5-2 provides:

Felony Assault.—(a) Every person who shall make an assault or battery, or both, with a dangerous weapon, or with acid or other dangerous substance, or by fire, or an assault or battery which results in serious bodily injury, shall be punished by imprisonment for not more than twenty (20) years.

Id. To succeed on such a charge, the state must prove the following elements: “[1] any unlawful offer to do corporal injury to another[,] [2] under such circumstances as may create a reasonable apprehension of immediate injury unless the person so threatened takes action or inaction to avoid it, coupled with [3] a present ability to carry the offer into effect.” State v. Caba, 887 A.2d 370, 372, 373 (R.I. 2005) (quoting State v. Jeremiah, 546 A.2d 183, 186-87 (R.I. 1988)). If the object is employed in such a manner that serious bodily harm could have resulted, an assault with a dangerous weapon has been committed, whether or not injury occurs. State v. Bolarinho, 850 A.2d 907, 910 (R.I. 2004).

One who aids and abets the commission of a crime may be charged and convicted as a principal. State v. Graham, 941 A.2d 848, 858 (R.I. 2008). However, a person must knowingly

and willfully participate in a crime to be responsible for it; mere presence is not enough. State v. Brezinski, 731 A.2d 711 (R.I. 1999); In re Calderone, 115 R.I. 316, 345 A.2d 871 (R.I. 1975).

It is an established principle of law that it is acceptable for the trial justice to rely on the prosecutor's recitation of the facts to establish the factual basis for the record. See Feng, 421 A.2d at 1269. Here, the prosecutor explained that Martinez was with the assailants, and that he was "part and parcel" to their criminal actions. (Hr'g. Tr. at 5:23.) Specifically, the prosecutor stated that "they," including Martinez, "shot at" the victim. (Hr'g. Tr. at 5.) This does not establish mere presence, as Martinez claims, but rather, it lays the factual basis that Martinez was aware of, and participated in, the crime with Carlos Arias and Edwin Santos. See State v. Davis, 877 A.2d 642, 648 (R.I. 2005).

In addition, the Defendant assured the trial court that he was fully aware of and agreed to the charges. The reviewing court shall consider "the testimony of trial counsel, the transcript of the plea hearing, and [the] Petitioner's own responses to questioning" to determine whether there is a factual basis to support the charges, and only overturn them if this consideration "discloses no facts" that would support the original finding. Azevedo v. State, 945 A.2d 335, 338 (R.I. 2008); Frazar, 822 A.2d at 935-36 (quoting Feng, 421 A.2d at 1269). A reading of the transcript as a whole supports the conclusion that the trial justice had a factual basis for allowing the plea on the pending charge of ADW.

Martinez also claims that the nature of the charge was not effectively conveyed to him since it was only described by name. However, where the count is straightforward and sets out the elements, as here "felony assault, assault with a deadly weapon," the trial judge can rely on the count as well as the Defendant's admission to the conduct alleged to satisfy himself that a plea was based on fact. Feng, 421 A.2d at 1271. (Hr'g. Tr. at 1-2.)

The trial justice inquired whether Martinez heard, understood, and admitted to the facts which the prosecutor stated constituted “assault with a deadly weapon.” (Hr’g. Tr. at 5.) Martinez responded affirmatively and admitted the facts to be true. (Hr’g. Tr. at 6.) The standard is not one that requires this Court to make a detailed explanation of the charges, element by element, and fact by fact, but rather, that the Defendant understands them. See Camacho, 58 A.3d at 186 (citing Henderson v. Morgan, 426 U.S. 637, 644-45 (1976)).

In addition, the trial justice inquired into the plea agreements which Martinez had signed in both English and Spanish. He confirmed that Martinez not only signed them, but that he understood what they meant and verified that he had discussed them with his attorney prior to signing them. There was also an extensive discussion of the rights that Martinez would waive by entering a nolo plea.¹ (Hr’g. Tr. at 2-6.) Martinez indicated that he understood his waiver of these rights and that he wished to continue. All of this gave him an informed basis upon which to make an educated decision before entering his plea. See Tavares v. State, 826 A.2d 941, 943 (R.I. 2003). Accordingly, the change of plea hearing satisfied the requirements of Rule 11.

IV

Conclusion

Upon review of the memoranda provided by the parties and the record, this Court finds that Martinez has not met his burden of proving by a preponderance of the evidence that there is a need for post-conviction relief. There is a sufficient factual basis in the record to support the

¹The trial justice explained that Martinez was waiving the right to a bench or jury trial, to have the State prove the charge beyond a reasonable doubt, to a presumption of innocence, against self-incrimination, to present witnesses and evidence in his defense, and to appeal the sentence the Court imposes. (Hr’g. Tr. at 2-5.)

finding that Martinez entered a plea voluntarily and intelligently to the charge of assault with a deadly weapon.

Accordingly, this Court denies Martinez's request for post-conviction relief.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT: Providence Superior Court

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JUSTICE/MAGISTRATE: Matos, J.

ATTORNEYS:

For Plaintiff: John F. Cicilline, Esq.

For Defendant: Jeanine McConaghy, Esq.