

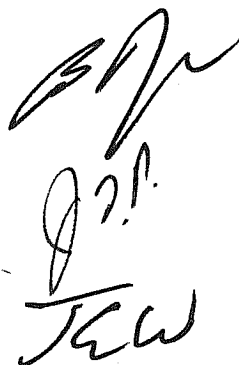
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0900



STATE OF LOUISIANA

VERSUS

TYREE YOUNG

Judgment Rendered: November 2, 2007.

\* \* \* \* \*

On Appeal from the  
22nd Judicial District Court,  
in and for the Parish of St. Tammany  
State of Louisiana  
District Court No. 370037

The Honorable Elaine W. DiMiceli, Judge Presiding

\* \* \* \* \*

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Tyree Young  
Jackson, La.

In Proper Person/Appellant

\* \* \* \* \*

BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

**CARTER, C.J.**

The defendant, Tyree Young, was charged by bill of information with one count of possession of cocaine (Count 1), a violation of LSA-R.S. 40:967C, and one count of possession of methylenedioxymethamphetamine (Count 2), a violation of LSA-R.S. 40:966C. He pled not guilty to both counts. Following a jury trial, the defendant was found guilty as charged on both counts. On each count, Count 1 and Count 2, he was sentenced to five years at hard labor, the sentences to run concurrently.

Thereafter, the State filed a habitual offender bill of information alleging, in regard to Count 2, that the defendant was a habitual offender. Following a hearing, the defendant was adjudged a fourth felony habitual offender on Count 2. The sentence previously imposed on Count 2 was vacated, and the defendant was sentenced to twenty years at hard labor.

In a prior opinion of this court, **State v. Young**, 06-0234 (La. App. 1 Cir. 9/15/06), 943 So.2d 1118, 1124, writ denied, 06-2488 (La. 5/4/07), 956 So.2d 606, the defendant's conviction and sentence on Count 1 were affirmed. For reasons explained in the prior opinion, we vacated the defendant's conviction, habitual offender adjudication, and sentence on Count 2, and we remanded the matter for further proceedings.

Following remand, the State filed a habitual offender bill seeking to have the defendant adjudicated as a habitual offender based on his conviction for possession of cocaine (Count 1). Following a hearing, the trial court adjudicated the defendant as a fourth felony habitual offender, vacated his previous sentence on Count 1, and sentenced him to twenty years

at hard labor. The defendant appeals, asserting one counseled and three pro se assignments of error. We affirm.

### **PRO SE ASSIGNMENTS OF ERROR**

The defendant filed a pro se brief raising three assignments of error in relation to his habitual offender adjudication. Through his first assignment of error, the defendant contends that the trial court erred in not allowing him to present affirmative evidence that the guilty pleas in the predicate offenses were constitutionally infirm in that he was not informed of, nor did he specifically waive, his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers.

The State set forth five predicate convictions, all from the Twenty-Second Judicial District Court, that are summarized herein from the facts found in the record:

1. A conviction entered on March 14, 1997, for possession of cocaine, a violation of LSA-R.S. 40:967C in docket number 258,777.
2. A conviction entered on March 14, 1997, for illegal possession of stolen things, a violation of LSA-R.S. 14:69 in docket number 265,856.
3. A conviction entered on October 16, 1997, for unauthorized entry of an inhabited dwelling, a violation of LSA-R.S. 14:62.3 in docket number 274,804.
4. A conviction entered on October 16, 1997, for distribution of cocaine, a violation of LSA-R.S. 40:967A(1) in docket number 274,865.
5. A conviction entered on March 1, 1999, for distribution of cocaine, a violation of LSA-R.S. 40:967A(1) in docket number 296,359B.

Considering the two convictions entered on March 14, 1997, as one conviction and the two convictions entered on October 16, 1997, as one conviction, the trial court concluded that the defendant was a fourth felony habitual offender.

In order to use a prior guilty plea to enhance punishment under LSA-R.S. 15:529.1, the State need only prove the fact of conviction and that the defendant was represented by counsel (or waived counsel) at the time he entered his plea. Thereafter, the defendant bears the burden of proving a significant procedural defect in the proceedings. Once a defendant makes an affirmative showing of an infringement of his rights or a procedural irregularity in the plea transcript, the State must prove the constitutionality of the predicate pleas by producing a “perfect” transcript. If the State produces less than a “perfect” transcript, for example a guilty plea form, a minute entry, an “imperfect” transcript, or any combination thereof, the judge must then weigh the evidence to determine whether the State has met the burden of proving that the defendant’s prior guilty plea was informed and voluntary and made with an articulated waiver of the three **Boykin** rights. **State v. Leblanc**, 04-1032 (La. App. 1 Cir. 12/17/04), 897 So.2d 736, 741, writ denied, 05-0150 (La. 4/29/05), 901 So.2d 1063, cert. denied, 546 U.S. 905, 126 S.Ct. 254, 163 L.Ed.2d 231 (2005).

In the defendant’s pro se brief, he argues that the prosecution failed to overcome its initial burden of proof. We disagree. In support of each of the predicate convictions, the State provided expert testimony from Dawn Powell, who worked in the St. Tammany Parish Sheriff’s Office Crime Lab, that the defendant’s fingerprints matched all prints on the back of the bills of information. The State also introduced minute entries for each predicate conviction indicating the defendant was represented by counsel at each prior guilty plea and was fully informed of his **Boykin** rights at each plea.

Accordingly, the State met its initial burden of proof. Moreover, the defendant's contention that this evidence does not indicate he was fully informed of his **Boykin** rights is contrary to what appears in the record. This assignment of error is without merit.

In the defendant's second pro se assignment of error, he argues the trial court erred in allowing the State to amend the habitual offender bill of information. The defendant contends that the State proceeded to trial with a bill of information alleging he had been convicted for possession of "meth" under Count 2. The defendant points out that this conviction had been previously overturned in a prior opinion by this court, and he had prepared to defend himself under that theory, but the State was allowed to amend the bill of information after presenting its case to reflect the State was seeking to enhance his conviction for Count 1, possession of cocaine.

Our review of the habitual offender bill of information notes that the bill reflects the State was seeking to enhance the defendant's conviction for Count 1, possession of cocaine. On the second page of the habitual offender bill of information, in an obvious typographical error, the State refers to the conviction sought to be enhanced as Count 2. The trial court allowed the second page of the bill to be amended. Under these circumstances, this amendment was nothing more than a cure for a typographical error. The habitual offender bill of information plainly sets forth which conviction the State sought to enhance, and the defendant had the benefit of representation by counsel. Accordingly, this assignment of error is without merit.

In the defendant's third pro se assignment of error, he contends the trial court erred in allowing the introduction of the authenticated bills of

information for all the predicate offenses. The defendant objected on the basis that he had not been provided copies of the documents that included the fingerprints.

We do not find error in the trial court's admitting of these documents. Defense counsel had ample opportunity to cross-examine the fingerprint expert presented by the State; thus the failure of the State to produce copies of the fingerprints associated with the predicate bills of information did not prejudice the defendant in any manner. Accordingly, this assignment of error is without merit.

#### **COUNSELED ASSIGNMENT OF ERROR**

In the defendant's counseled assignment of error, he contends the trial court failed to inform him of the delays for filing for postconviction relief. The sentencing transcript indicates that the trial court failed to advise the defendant of the two-year time period from when a defendant's conviction becomes final in which he can file an application for postconviction relief. As the issue is raised herein, it is apparent that the defendant has notice of the limitation period and/or has an attorney who is in the position to provide him with such notice. Under these circumstances, we decline to remand for the trial court to provide such notice. Instead, out of an abundance of caution and in the interest of judicial economy, we note that LSA-C.Cr.P. art. 930.8A generally provides that no application for postconviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence have become final under the provisions of LSA-C.Cr.P. art. 914 or

922. **State v. Godbolt**, 06-0609 (La. App. 1 Cir. 11/3/06), 950 So.2d 727,  
732.

**HABITUAL OFFENDER ADJUDICATION AND SENTENCE**  
**AFFIRMED.**