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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL J. OZECHOWSKI,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 82A04-0902-PC-114
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Pigman, Judge
The Honorable Terrell R. Maurer, Magistrate
Cause No. 82D05-0603-CM-1546

July 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Michael J. Ozechowski appeals the denial of his petition for post-conviction relief. The sole issue is whether the post-conviction court erred in concluding that Ozechowski had been advised of his *Boykin*[1] rights at the time he entered his guilty plea. We affirm.

On March 3, 2006, the State charged Ozechowski with class C misdemeanor operating a vehicle while intoxicated ("OWI"), class A misdemeanor OWI in a manner endangering another person, class A misdemeanor marijuana possession, and class C infraction speeding. At a June 22, 2006 hearing, Ozechowski pled guilty to class C misdemeanor OWI in exchange for the dismissal of the remaining counts. At the hearing, he tendered a signed guilty plea advisement and waiver of rights, which provided in pertinent part:

> You are entitled to a speedy and public trial by Court or by Jury in the County where the offense was allegedly committed. You are entitled to have an attorney represent you at all stages of this proceeding. If you cannot afford an attorney, the Court will appoint an attorney to represent you free of charge. If you wish to hire your own attorney, the Court will give you a reasonable continuance to allow you to do so. If a trial is held, you will be presumed to be innocent and you cannot be convicted of an offense unless the State proves beyond a reasonable doubt that you committed it. If a trial is held you may testify on your own behalf if you wish, but you cannot be compelled to testify against yourself and you do not have to prove or explain anything. If a trial is held you may call witnesses to testify for you and submit evidence. Upon your request, the Court will, at no expense to you, issue subpoenas to require your witnesses to come to Court to testify or produce any item needed for your defense. The court will give you a reasonable continuance to allow you to subpoenas [sic] witnesses or evidence. If a trial is held, you have the right to confront and cross-examine any witness used by the State and object to any evidence you believe is improper. If a trial is held and you are found guilty, you will have the right to appeal the conviction to a higher court and if you cannot afford an attorney for the appeal, the Court will appoint one for you free of charge.
>
> By pleading guilty, you are admitting the truthfulness of the facts alleged in the charging information and giving up all these rights.

[1] *Boykin v. Alabama*, 395 U.S. 238 (1969).

Appellant's App. at 15.

On appeal, Ozechowski contends that the post-conviction court erred in concluding that he had been advised of his *Boykin* rights at the time he pled guilty to class C misdemeanor OWI. The petitioner in a post-conviction proceeding "has the burden of establishing grounds for relief by a preponderance of the evidence." Ind. Post-Conviction Rule 1(5); *Brown v. State*, 880 N.E.2d 1226, 1229 (Ind. Ct. App. 2008), *trans. denied.* When appealing the denial of a petition for post-conviction relief, the petitioner stands in the position of one appealing a negative judgment. *Brown*, 880 N.E.2d at 1229. Therefore, "[o]n review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court." *Id.* Here, the post-conviction court entered findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6). "A post-conviction court's findings and judgment will be reversed only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made." *Brown*, 880 N.E.2d at 1230 (citation and quotation marks omitted).

In *Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969), the United States Supreme Court identified three constitutional rights that a defendant must knowingly waive in order for the court to find that the plea was voluntarily and intelligently entered: the right to a jury trial, the right to confront and cross examine his accusers, and the right against self-incrimination. Indiana Code Section 35-35-1-2(a) provides that the court shall not accept a guilty plea without first determining that the defendant has been informed that by his plea he waives his

right to a public and speedy jury trial, to confront and cross-examine witnesses, to subpoena witnesses, and to avoid self-incrimination. Subsection (b) states that a defendant in a misdemeanor case may waive his *Boykin* rights by signing a written waiver. The record of the guilty plea proceeding need not show that the defendant was *formally* advised of these rights; further, it does not require that the record contain a formal waiver of these rights. *Fisher v. State*, 878 N.E.2d 457, 467 (Ind. Ct. App. 2007), *trans. denied* (2008); *see also Williams v. State*, 263 Ind. 174-75, 325 N.E.2d 827, 833 (1975) (stating that the record need only show that defendant was advised of his *Boykin* rights prior to the entry of his plea). We will vacate his conviction only if he did not know or was not advised at the time of his plea that he was waiving his *Boykin* rights. *Fisher*, 878 N.E.2d at 467.

The post-conviction court's findings and conclusions include the following:

Findings of Fact

1. On June 22, 2006, the Defendant, Michael Ozechowski, appeared with his attorney … for the purpose of entering a plea of guilty ….

2. On that date, the Defendant read, signed and tendered to the Court the Guilty Plea Advisement and Waiver of Rights form ….

3. At the sentencing hearing, the following colloquy took place.

> BY THE COURT: How do you plead?
>
> BY MR. OZECHOWSKI: Guilty.
>
> BY THE COURT: All right, sir. Do you admit that on or about March 3, '06, Vanderburgh County, State of Indiana, you did operate a 2001 Pontiac with at least eight one hundredths of a percent of alcohol by weight in grams but less than fifteen one hundredths of a percent of alcohol by weight in grams and one hundred milliliters of your blood or two hundred and ten liters of

> your breath?
>
> BY MR. OZECHOWSKI: Yes.
>
> BY THE COURT: All right, show a voluntary plea and a factual basis. A guilty plea advisement executed by the defendant is tendered and file stamped.

….

Conclusions of Law

….

6. In the present case, the Defendant read, signed and submitted to the Court a Guilty Plea Advisement and Waiver of Rights form which fully [a]dvised him of his constitutional and statutory rights and that by pleading guilty he was waiving these rights.

7. The Court accepted the Defendant's guilty plea contemporaneously with acknowledging the filing of the Defendant's signed guilty plea advisement. The Court did not accept the guilty plea and then advise the Defendant. Rather, the court acknowledged receipt of the advisement form which had already been read and signed by the Defendant. This process was sufficient to enable the Court to validly conclude that the Defendant was meaningfully informed of his *Boykin* rights at the time he entered his plea of guilty.

Appellant's App. at 10-11.

Ozechowski asserts that the trial court accepted his guilty plea *before* it made a determination that he understood the rights he was waiving. We disagree. The post-conviction court concluded that the trial court accepted the factual basis for the plea contemporaneously with the *tendering and file stamping* of the advisement and waiver form, not the *signing* of it. Ozechowski admits that the form contained a statement of his *Boykin* rights. Appellant's Br. at 8. Moreover, his signature appears on the form. Appellant's App.

at 16. Thus, the record supports a reasonable inference that Ozechowski signed the form before it was tendered and file stamped, which is sufficient in a misdemeanor case. Ind. Code § 35-35-1-2(b). As such, the record supports the post-conviction court's conclusion that Ozechowski had been meaningfully informed of his *Boykin* rights at the time the trial court accepted his guilty plea. Accordingly, we affirm.

Affirmed.

BRADFORD, J., and BROWN, J., concur.