

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 24, 2008

STATE OF TENNESSEE v. ANTHONY WOODS

Appeal from the Criminal Court for Knox County
No. 80980 Richard R. Baumgartner, Judge

No. E2007-02763-CCA-R3-CD - Filed December 22, 2008

The Defendant, Anthony Woods, pleaded guilty to one count of reckless aggravated assault, a Class D felony. The trial court sentenced him to three years to be served on probation. In this appeal, he challenges that court's decision to deny judicial diversion. After considering the lack of a factual basis for his guilty plea, however, we conclude that the trial court's acceptance of that plea violated Tennessee Rule of Criminal Procedure 11(b)(3). We accordingly vacate the judgment of conviction and remand to the trial court for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Vacated;
Case Remanded**

DAVID H. WELLES, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JERRY L. SMITH, J., joined.

Bruce E. Poston, Knoxville, Tennessee, for the appellant, Anthony Woods.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Del Holley, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

The Defendant was originally charged with one count of statutory rape and one count of sexual battery by an authority figure as a result of contact he allegedly had with the fifteen-year-old female victim between March and July 2004. At the Defendant's guilty plea submission hearing on August 13, 2007, the State agreed to dismiss both of these charges in exchange for the Defendant's plea of guilty to one count of reckless aggravated assault. The court allowed an amendment to the presentment and accepted the Defendant's plea of guilty, with an agreed sentence

of three years as a Range I, standard offender. The Defendant applied for both probation and judicial diversion. The State and the Defendant agreed that the Defendant had neither used a deadly weapon nor caused serious bodily injury required to support the “aggravated” element of the crime to which the Defendant was pleading guilty, but that his plea was to establish his crime as a Class D felony and to fix his sentencing range at the desired level. See Tenn. Code Ann. § 39-13-102(a)(2) (outlining the elements of reckless aggravated assault). The Defendant waived any objection to that missing element.

The State also told the court what the proof would have been had the case gone to trial. The victim would have testified that the Defendant led her Bible Study class at Walridge Baptist Church in 2003 and that she had started to babysit the Defendant’s children in March or April 2004. She also would have testified that on three occasions after she began to babysit but before August 2004, the Defendant touched her in an inappropriate manner. She was fifteen years old at that time. The State conceded, and noted as the main reason for its decision to accept the Defendant’s plea, that the proof at trial also would have revealed some inconsistencies between different accounts the victim had given of the relevant events.

The Defendant was sentenced on November 1, 2007. The court acknowledged the Defendant’s eligibility for probation. It also acknowledged the State’s presentation of a certificate from the Tennessee Bureau of Investigation confirming the Defendant’s eligibility for judicial diversion.¹

At the sentencing hearing, the victim read a prepared statement, and she then answered questions from the court. She said that the Defendant’s sexual contact with her involved penetration. She alleged that this conduct had taken place in the Defendant’s house and in his truck on “at least three or four” occasions. The Defendant submitted only his statement in the presentence report: “I very much regret the stress and pain it caused both sides, my family and [the victim].” During argument, the Defendant’s lawyer stated that the Defendant “entered this plea basically to spare his family, and both sides a lot of emotion, it’s the kind of case you can’t win even when you win.”

The court found that the Defendant should not be incarcerated, stating that:

[the Defendant] is a 35 year-old individual who’s on the surface at least, when you look at the record, always been employed, has no criminal record, has no history of drug use, has nothing that I see on a regular basis that would keep me from ordering a sentence to be served on probation as opposed to incarceration.

After a consideration of the relevant factors, the court denied judicial diversion, however, and sentenced the Defendant to three years of supervised probation.

¹Tennessee Code Annotated section 40-35-313(a) outlines the judicial diversion requirements.

The Defendant appealed, briefing only the judicial diversion issue. The State also briefed only that issue. This Court filed an order directing the State additionally to brief the issue of whether the Defendant's guilty plea accorded with the Tennessee Rule of Criminal Procedure 11(b)(3) "factual basis" requirement.² In its supplemental brief, the State concedes that the plea violated that rule.³ We now consider the issue.

Analysis

The Defendant pleaded guilty to "reckless" aggravated assault. See Tenn. Code Ann. § 39-13-102(a)(2). This crime is committed when a person recklessly commits an assault and either causes serious bodily injury to another or uses or displays a deadly weapon. See id. (emphasis added).

Tennessee Rule of Criminal Procedure 11(b)(3) states that "[b]efore entering judgment on a guilty plea, the court shall determine that there is a factual basis for the plea." This Court has stated that "the factual basis inquiry focuses upon what the defendant understands about the applicable law in relation to the facts he is admitting. Thus, upon the record showing that a guilty plea is voluntarily and understandingly being made, the guilty plea, by itself, is sufficient to support a conviction." State v. Lord, 894 S.W.2d 312, 316 (Tenn. Crim. App. 1994). In Lord, the Defendant challenged the factual basis for his guilty plea to aggravated rape of a certain victim. Lord, who also pleaded guilty to the murder of the same victim, had given a number of inconsistent statements about the events leading to the victim's death. In one of them, he claimed the victim had sexual intercourse with him voluntarily; in another he claimed to have raped her, causing serious bodily injury. Id. at 315. He therefore argued that his plea of guilty to aggravated rape lacked a factual basis because it rested solely on one of his inconsistent, and therefore incredible, statements. Id. at 316. This Court held that "[t]he presentation of the defendant's admissions and other corroborating evidence was sufficient to show all of the elements needed for first degree murder and aggravated rape so as to warrant the trial court's finding that a factual basis existed for the guilty pleas. Nothing more was required." Id. at 317.

The trial court in this case, unlike in Lord, had no evidence before it supporting the element of aggravation in the Defendant's plea. Both parties admitted in open court that the Defendant did not cause serious bodily injury to the victim or use or display a deadly weapon against her. Thus, the parties stipulated that the Defendant did not commit the crime to which he was pleading guilty. Under these circumstances, we conclude that the trial court should not have entered judgment on the guilty plea because there was no factual basis for the plea. In our view, the trial court was required to reject the plea agreement.

²This Court has the discretion to review any issue not presented for review in order to prevent injury to the interests of the public or to prevent prejudice to the judicial process. Tenn. R. App. P. 13(b)(2), (3). In addition, when necessary to do substantial justice, this Court may consider an error that has affected a substantial right of an accused at any time, even though the error was not assigned as an error on appeal. Tenn. R. Crim. P. 52(b).

³The Defendant was also given the opportunity to brief the issue, but he chose not to do so.

Conclusion

Because the Defendant's conviction was entered in violation of Tennessee Rule of Criminal Procedure 11(b)(3), we vacate the judgment and remand to the trial court for further proceedings consistent with this opinion.

DAVID H. WELLES, JUDGE