

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 24, 2009 at Knoxville

STATE OF TENNESSEE v. JASON A. ALBRIGHT

**Appeal from the Circuit Court for Marion County
No. 8221 Thomas W. Graham, Judge**

No. M2009-00640-CCA-R3-CD - Filed May 28, 2010

The Defendant, Jason A. Albright, was convicted by a jury of driving under the influence (DUI). Following a sentencing hearing, the trial court sentenced the Defendant for DUI, third offense to eleven months and twenty-nine days incarceration suspended to probation after the service of 120 days in jail. On appeal, the Defendant contends that his prior convictions are invalid and that the trial court erred in denying him the right to attack the validity of the prior convictions at the sentencing hearing. Following our review, we conclude that one of the prior convictions was facially invalid and should not have been used to enhance the Defendant's DUI conviction. Therefore, we direct the trial court to modify the judgment to reflect a conviction for DUI, second offense and to conduct another sentencing hearing.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed as Modified; Case Remanded.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Charles G. Wright, Jr., (on appeal) and Robin Ruben Flores (at trial), Chattanooga, Tennessee, attorneys for appellant, Jason A. Albright.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilbur, Assistant Attorney General; James Michael Taylor, District Attorney General; and David Owen McGovern, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

Although the Defendant is not challenging the sufficiency of the convicting evidence for the underlying DUI offense, we will provide the following factual summary to establish context for the Defendant's issues on appeal. On July 21, 2007, Deputy Jerry VanAllman of the Marion County Sheriff's Department was on duty in Sequatchie County when he went to Ketner Mill Road. In the summer, Ketner's Mill is a popular swimming area in Sequatchie County. Deputy VanAllman was talking with some people by the swimming area of Ketner's Mill when he noticed the Defendant driving towards him. The Defendant was driving normally; however, when he parked the car and got out of the car, the Defendant appeared "unsteady." Deputy VanAllman approached the Defendant to see if he had been driving while impaired. Upon approaching the Defendant, Deputy VanAllman smelled "the odor of alcohol." The Defendant's eyes were "red and bloodshot and his speech was slurred slightly." Deputy VanAllman looked in the Defendant's vehicle and saw "an open container in the console, half consumed" and "four beer[s] in the floorboard on the passenger's side that [had not] been opened." When the Defendant admitted that he had been drinking, Deputy VanAllman asked the Defendant if he would take some field sobriety tests. The Defendant complied but was unable to pass the tests.

Deputy VanAllman arrested the Defendant and left the car with one of the Defendant's friends. At the police station, the Defendant took a breathalyzer test. At that point, his blood alcohol content was .12 percent. The Defendant contested Deputy VanAllman's version of the facts and argued that his friend was the one who was driving the vehicle. However, based upon the above evidence, the jury found the Defendant "guilty of driving while he had an alcohol concentration in his blood or breath of .08 of 1 percent or more" and "guilty of driving under the influence of an intoxicant."

At the conclusion of the trial, the Defendant waived his right to a jury determination of whether he had the requisite number of prior convictions to be convicted of DUI, third offense. The trial judge stated that he would allow defense counsel to argue the validity of the prior DUI convictions at the sentencing hearing. Defense counsel started to argue that the judgments of conviction were invalid because the convictions violated the confrontation clause in that those "who were participating in those convictions [should be required] to testify as to whether that was actually the same [Defendant]." Defense counsel also started to argue that the Defendant waived counsel in regard to one of the convictions and that the waiver was not apparent in the judgment. At that time, the trial court stated, "You can go ahead and put together your motion . . . on any law you have on [those issues, and] we'll deal with it at the same time [as the sentencing hearing]." The trial court further stated,

If the two [prior] convictions stand, this is a minimum of 120 days, but it could be as much as 11 months and 29 days, so you know, between those numbers is what the sentencing hearing is about, and we'll have a motion as to whether or not something is right or wrong about the other convictions.

However, at the sentencing hearing, when defense counsel attempted to argue that the previous convictions were invalid, the trial court stated,

You didn't object to that document at trial. You didn't object to the judgments themselves. If you're saying you made an objection at all it may have been to how you got to that judgment, which then becomes your job to present stuff.

At this point, defense counsel conceded the point and stated, "[A]pparently, that's why we have the appellate procedures. Apparently, [y]our [h]onor and I disagree" Following the sentencing hearing, the trial court sentenced the Defendant in accordance with a conviction of DUI, third offense to eleven months, twenty-nine days in jail, with the Defendant to serve 120 days in jail and the remainder of the sentence on probation.

ANALYSIS

On appeal, the Defendant contends that his previous convictions are invalid because the judgment from East Ridge was not signed by a judge and because the judgment from Hamilton County does not show that the Defendant had an attorney or waived his right to an attorney prior to pleading guilty. The Defendant also contends that the trial court erred by denying defense counsel the opportunity to attack the validity of the prior DUI convictions. In addition, the Defendant contends that the trial court erroneously placed the burden on the Defendant to prove the invalidity of the previous DUI convictions. The State concedes that the trial court erred in denying defense counsel the opportunity to challenge the validity of the prior convictions and that this error was a violation of the Defendant's right to due process of law.

When the State seeks to enhance a DUI conviction based upon a defendant's prior conviction for DUI, "the official driver record maintained by the department and produced upon a certified computer printout shall constitute prima facie evidence of the prior conviction." Tenn. Code Ann. § 55-10-403(g)(3)(A). If the defendant challenges the prior convictions, "the court may require that a certified copy of the judgment of conviction of the offense be provided for inspection by the court." Tenn. Code Ann. § 55-10-403(g)(3)(C). "[U]nless invalid on its face, a prior judgment of conviction in a court with personal and

subject matter jurisdiction cannot be collaterally attacked in a subsequent proceeding in which the challenged conviction is used to enhance punishment.” State v. McClintock, 732 S.W.2d 268, 272 (Tenn. 1987). Consequently, “a facially invalid judgment cannot be used to enhance punishment in a subsequent prosecution.” State v. Jody Glen Loy, No. E2006-02206-CCA-R3-CD, 2008 WL 2229259, at *6 (Tenn. Crim. App. May 30, 2008) (citing McClintock, 732 S.W.2d at 272-73).

Accordingly, we conclude that the trial court erred in denying the Defendant the right to attack the facial validity of the judgments and that such denial was a violation of the Defendant’s right to due process of law. As the only issue regarding the Defendant’s prior convictions is the facial validity of the documents used to enhance his present DUI conviction, we have examined the submitted documents.

The first document is a December 16, 2002 judgment of the East Ridge City Court, No. 52208, and the second document is a May 11, 2004 document purporting to be a judgment of an unspecified court, No. 1071888. At the sentencing hearing, the presentence investigator also submitted a copy of a December 2003 “Tennessee Uniform Citation” that referenced the same docket number as the second document, No. 1071888. The 2003 citation alleged the Defendant’s commission of DUI and instructed him to report to the Hamilton County General Sessions Court on February 18, 2003. The judgment and the citation also reference the same citation number, No. 542481F, and contain the same offense date, December 17, 2003.

We must first note that the issue of identity in regard to the prior convictions, which was mentioned by defense counsel following the jury trial and, to the extent allowed by the trial court, again at the sentencing hearing, is ultimately without merit. Defense counsel attempted to argue that the State must establish the identity of the Defendant in regard to the prior convictions. While the State cannot attempt to enhance a defendant’s conviction with crimes he has not committed, the State is not required to submit extensive proof regarding a defendant’s identity in relation to a prior conviction. Here, the submitted documents bear the same name and same address for the Defendant as submitted in the third DUI citation. Accordingly, the Defendant’s identity in regard to the prior convictions was established through “similarity of name.” State v. Cottrell, 868 S.W.2d 673, 678 (Tenn. Crim. App. 1992).

I. East Ridge Judgment

At trial, sentencing, and on appeal, defense counsel attempted to attack the East Ridge City Court judgment on the ground that the document was not signed by a judge. “An unsigned [general sessions court] judgment is void and cannot be used as proof of a prior

conviction for the purpose of enhancing the sentence for a subsequent conviction.” State v. McJunkin, 815 S.W.2d 542, 543 (Tenn. Crim. App. 1991). We fail to see why this rule would not apply to the East Ridge City Court judgment. Accordingly, we conclude that the judgment is invalid on its face and ineffectual and that extrinsic evidence would not be admissible to rehabilitate it. Id. at 544; see State v. Bud Cash, Jr., No. 286, 1992 WL 13905, at *13 (Tenn. Crim. App., Knoxville, Jan. 30, 1992) (“Initially, we note that the 1974 judgment for assault and battery is not signed by a judge and the judgment document, which includes the affidavit and warrant for arrest, is devoid of any reference to or waiver of counsel representing the defendant. Therefore, the judgment is void on its face and the trial court should not have relied upon it as valid proof of a prior conviction.”), perm. app. denied (Tenn. May 4, 1992). Based upon McJunkin, the East Ridge “judgment” as originally submitted was not available for aggravating the Defendant’s current DUI. We conclude that it should be disregarded in the present case as a prior DUI conviction.

II. Hamilton County Judgment

At trial, sentencing, and on appeal, defense counsel attempted to attack the Hamilton County judgment on the ground that the document does not reflect whether the Defendant was represented by counsel or whether he waived his right to counsel when he pled guilty to the prior offense. The Hamilton County document before this court did not provide any place for the Defendant’s signature attesting that he waived his right to counsel. Accordingly, this case is analogous to the supreme court’s opinion in Hickman v. State, 153 S.W.3d 16 (Tenn. 2004). In Hickman, the supreme court held that a judgment of conviction that showed the convicting court’s jurisdiction over the subject matter and the defendant was not invalid on its face merely because it was “silen[t] as to whether the [defendant] was represented by counsel or waived the right to counsel.” Hickman, 153 S.W.3d at 24. According to Hickman, the claim of a prior conviction being uncounseled does not implicate irregularity or invalidity of the prior conviction. The Defendant is foreclosed from attacking the prior Hamilton County conviction on the issue of whether it was voidable because he was uncounseled in the previous cases; such an attack would have to be mounted in a post-conviction proceeding. McClintock, 732 S.W.2d at 271-72.

However, we do note that the Hamilton County document did not identify the adjudicating court or the county, state, or country in which it functioned. When reviewing this document, we cannot discern from the face of the document whether the issuing entity had jurisdiction to declare a judgment against the Defendant. When this document is read in conjunction with the citation presented at the sentencing hearing, we can discern that the case was initiated in the general sessions court of Hamilton County. Accordingly, we must now determine whether the broader record submitted in the prior case may be reviewed to determine the court’s jurisdiction in accordance with the case holdings in McClintock and

Hickman. Analogously, when determining jurisdiction in a habeas case, this court is directed to look to the “face of the judgment or the record of the proceedings upon which the judgment is rendered.” State v. Ritchie, 20 S.W.3d 624, 630 (Tenn. 2000) (emphasis added). Thus, facial invalidity for habeas corpus purposes means that the invalidity of the judgment “must appear clearly and indisputably either on the face of the judgment or in the original trial record before a writ of habeas corpus can issue from a Tennessee court.” Ritchie, 20 S.W.3d at 633 (emphasis added).

The object of a habeas corpus proceeding as described in Ritchie – to determine the jurisdictional basis for the original court’s action – is the same as our object in the present case. Consequently, because the December 2003 citation, which is the leading process in the earlier case and references the same docket number, citation number, and offense date, is part of the record of the proceeding and should be considered, it supplies the missing information about the nature and location of the adjudicating court. Accordingly, the Hamilton County documents are sufficient as proof of a prior conviction and should be used to enhance the Defendant’s conviction of DUI in this case.

CONCLUSION

In consideration of the foregoing and the record as a whole, we remand the case and direct the trial court to modify the judgment to reflect a conviction of DUI, second offense. The trial court must then conduct a new sentencing hearing.

D. KELLY THOMAS, JR., JUDGE