

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COREY AUCOIN

APPELLANT

FILED

VS.

JUN 12 2008
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NO. 2007-CA-2004

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUE

- I. The trial court correctly held that there was a factual basis for Aucoin's guilty and Aucoin's plea was voluntarily and intelligently made.

STATEMENT OF THE CASE

Corey Aucoin was indicted for possession of less than .1 grams of methamphetamine. It is from Aucoin's conviction in that charge that the instant appeal ensues. In a separate indictment, Aucoin was charged with possession of more than one-hundredth of a gram but less than two grams, possession of two or more precursors with intent to manufacture, and manufacture of methamphetamine. The Appeal in Cause Number 2007-CA-02295, currently before the Mississippi Court of Appeals arises from the second indictment containing three counts. On May 16, 2005, Aucoin withdrew his not guilty pleas and pled guilty to all charges. The Trial Court read the charges into the record at the plea hearing. (Tr. 11) Further, Aucoin

testified that his attorneys reviewed the indictments and the elements of the crimes with him and that he understood the elements of the crimes. (Tr. 12) Aucoin testified that his attorneys reviewed with him the discovery material, the police reports and other documents provided by the District Attorney. (Tr. 12) The Trial Court again read the charges and the respective minimum and maximum sentences for each. (Tr. 13) Aucoin testified that he was satisfied that the State could prove the elements of each crime beyond a reasonable doubt and pled guilty to each charge. (Tr. 14)

The Trial Court found that Aucoin knowingly, willingly, freely, voluntarily and intelligently entered his guilty pleas and that there exists a factual basis for the pleas. (Tr. 15)

SUMMARY OF THE ARGUMENT

The trial court correctly held that there was a factual basis for Aucoin's guilty plea. Aucoin was advised on the record about the nature of the crime charged against him and the consequences of the guilty plea. The indictment was sufficient to establish a factual basis for the Aucoin's guilty plea and the Aucoin admitted to committing the crime as stated in the indictment. Therefore, Aucoin's plea was voluntarily and intelligently made and his conviction should be affirmed.

ARGUMENT

I. The trial court correctly held that there was a factual basis for Aucoin's guilty and Aucoin's plea was voluntarily and intelligently made.

The trial court correctly held that there was a factual basis for Aucoin's guilty plea. Aucoin was advised on the record about the nature of the crime charged against him and the consequences of the guilty plea. Therefore, Aucoin's plea was voluntarily and intelligently made.

The Mississippi Court of Appeals has held, that if sufficiently specific, an indictment or information can be used as the sole source of the factual basis for a guilty plea. *Miller v. State*, 919 So.2d 1067 (Miss.Ct.App. 2005) (citing *Drake v. State*, 823 So.2d 593 (Miss.Ct.App. 2002)). In *Coleman v. State*, 979 So.2d 731 (Miss.Ct.App. 2008), the Mississippi Court of Appeals held that where the indictment was sufficient to establish a factual basis for the defendant's guilty plea and the defendant admitted to committing the crime as stated in the indictment, the trial record contained a sufficient factual basis to support the defendant's guilty plea to sale of cocaine, regardless of whether the defendant admitted all the elements required to support conviction.

In *Coleman*, the court held that:

The Uniform Rule of Circuit and County Court Practice 8.14(A)(3) states that, "[b]efore the trial court may accept a plea of guilty, the court must determine that . . . there is a factual basis for the plea." The Mississippi Supreme Court has defined "factual basis." The court explained that "[i]n the end there must be enough that the court may say with confidence the prosecution could prove the accused guilty of the crime charged, 'that the defendant's conduct was within the ambit of that defined as criminal.'" *Corley v. State*, 585 So.2d 765, 767 (Miss. 1991)(quoting *United States v. Broce*, 488 U.S. 563, 570, 109 S.Ct.757, 102 L.Ed.2d 927 (1989)). The court proceeded to give examples of the proof required to show a factual basis, but it emphasized that "[n]one of this is to say that the defendant's admission, standing alone, may not suffice, nor that we may not take the testimony of the accused in conjunction with all else in deciding that there is a factual basis for the plea." *Id.* (emphasis added). Furthermore, we have previously held that "if sufficiently specific, an indictment or information can be used as the sole source of the factual basis for a guilty plea." *Drake v. State*, 823 So.2d 593, 594 (Miss.Ct.App. 2002)(citation omitted).

Coleman v. State, 979 So.2d 731, 734 (Miss.Ct.App. 2008).

It was not necessary for the trial judge to question Aucoin about the specifics of his crimes. This Court has held that "a guilty plea by its very nature is an admission of guilt." *Drake v. State*, 823 So.2d 593, 594 (Miss.Ct.App. 2002). Further, "[t]he mere fact that the

factual basis does not provide all the details which may be produced at trial does not render the guilty plea fatal.” *Robinson v. State*, 964 So.2d 609, 613 (Miss.Ct.App. 2007) (citing *Drake v. State*, 823 So.2d at 594)). When it is specific, an indictment or information can serve as the only source for factual basis of the guilty plea. *Id.* The indictments against Aucoin clearly stated the elements that constitute the crime of possession, that Aucoin possessed less than 0.1 grams of methamphetamine. The Trial Court read the charge to Aucoin at the plea hearing. The Trial Court explained the maximum and minimum sentences to him. After the charges were read to Aucoin, the trial judge asked if Aucoin understood the elements of the crimes with which he was charged. Kimble responded that he understood. The trial judge then asked Aucoin if he had in fact committed each of the crimes. Aucoin responded that he had. Therefore, Aucoin’s assertion that there was no factual basis for his plea is without merit.

In the case at bar, the elements of the crime of possession were contained in the wording of the indictment read into the record by the Trial Court, “Mr. Aucoin, you are charged with possession of less than .1 gram of methamphetamine.” The elements of the crime are quite simply, the fact of possession, the identity of the controlled substance and the amount of the substance. All those elements are present in the wording of the indictment. The record further reflects that the trial judge questioned Aucoin regarding his understanding of the charges against him. Aucoin testified that his attorney reviewed the indictments and elements of the crime with him. Aucoin testified that he understood the elements of the crime and that his attorneys had reviewed the discovery material from the District Attorney’s office with him. (Tr. 12)

Based on the transcript of the plea hearing, the trial court did not err in finding that there was a factual basis for Aucoin’s guilty plea. Furthermore, to warrant an evidentiary hearing regarding this claim, Aucoin must demonstrate, through affidavits or otherwise, the potential

existence of facts that, if proven at the hearing would entitled him to relief. *Hearvey v. State*, 887 So.2d 836 (Miss.Ct.App. 2004) (citing *Potts v. State*, 955 So.2d 1196).


Based on the foregoing, Aucoin's assertion that there was no factual basis to his plea and his plea was therefore involuntary is without merit and the trial court should be affirmed.

CONCLUSION

The assignments of error presented by Aucoin are without merit and the decision of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

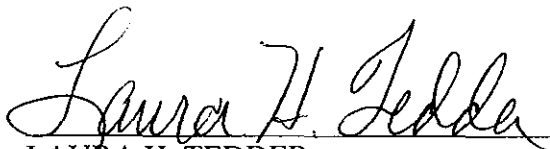
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 12th day of June, 2008.



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