IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: October 7, 2019

NO. S-1-SC-36669

STATE OF NEW MEXICO

Plaintiff-Petitioner,

v.

MILLARD DOYLE YANCEY

Defendant-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI
Mark Terrence Sanchez, District Judge

Hector H. Balderas, Attorney General
Elizabeth Ann Ashton, Assistant Attorney General
Charles J. Gutierrez, Assistant Attorney General
Santa Fe, NM

for Petitioner

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for Respondent

OPINION

NAKAMURA, Chief Justice.

{1} If a criminal defendant does not expressly state on the record "I plead guilty," is the guilty plea enforceable? The Court of Appeals concluded that, where these words are not spoken, the plea is not enforceable no matter the circumstances of the plea proceeding, the overall context of the plea colloquy, or the clarity with which a defendant otherwise manifests an intent to plead guilty. *See State v. Yancey*, 2017-NMCA-090, ¶¶ 1, 16, 37, 406 P.3d 1050. This is incorrect. Whether a plea is knowing and voluntary must be assessed from the totality of the circumstances. *See United States v. Rollings*, 751 F.3d 1183, 1188 (10th Cir. 2014); *accord Garcia v. State*, 2010-NMSC-023, ¶ 50, 148 N.M. 414, 237 P.3d 716. No magic words are either required or adequate to resolve that inquiry. We reverse and remand.

I. BACKGROUND

{2} Defendant, Millard Yancey, was charged in several related cases with fraud, embezzlement, and racketeering. Upon advice of counsel, he entered into three plea and disposition agreements. The terms of the pleas were recorded upon the standardized plea-agreement forms approved by this Court. Form 9-408 NMRA.

{3} Following Yancey's participation in a plea colloquy at a change of plea hearing, the district court accepted and recorded Yancey's guilty pleas. The pleas

entered indicated that no agreement as to sentencing had been reached and identified only what the maximum possible sentence could be. A sentencing hearing was conducted a few weeks later, and Yancey was sentenced in the cases to a total term of twenty-one years of incarceration. A judgment and sentence was entered in each case.

{4} Yancey filed two post-sentencing motions. One of the motions sought withdrawal of the guilty pleas as involuntarily and unknowingly made. In support of this motion, Yancey argued that he entered into the plea agreements with the "understanding that the most time he could receive . . . would be twelve (12) years[.]" The other motion sought reconsideration of the sentence imposed. As to this motion, Yancey emphasized that he was seventy-one years old and in declining health.

{5} At the hearing on these motions, Yancey acknowledged under oath that he did previously: admit that there was a factual basis for the pleas; receive information about his total exposure to incarceration if he pleaded guilty; and enter into the guilty pleas in open court. Despite these concessions, Yancey nevertheless emphasized that he "did not fully understand the elements of the charges that were being made against [him]."

{6} The district court denied Yancey's post-sentencing motions and left the sentences intact. Yancey appealed.

{7} The Court of Appeals, in a divided opinion, reversed and ordered the district court to vacate the sentences. *Yancey*, 2017-NMCA-090, ¶ 38. The majority declined to address the arguments Yancey raised in support of his position that the district court erred in declining to allow him to withdraw his plea. *Id.* ¶¶ 15-16. Rather, the majority focused its attention on an issue Yancey did not raise and which the majority characterized as "more fundamental and serious." *Id.* ¶ 16.

{8} According to the majority, "a glaring omission" had occurred: Yancey "never was asked to, nor did he ever, expressly plead guilty in open court to any crime on the record." *Id.* In other words, he never said "I plead guilty," or some similar words expressly acknowledging his guilt. This purported defect, the majority held, was dispositive. *Id.* It rendered Yancey's guilty pleas constitutionally invalid because, according to the majority, it is "a constitutional requirement that [a] defendant must actually admit he is guilty in open court on the record . . . ." *Id.* ¶ 23. This is necessary, they explained, because a plea "entails a decision of whether to exercise or waive basic constitutional trial rights." *Id.*

{9} The State filed a petition for writ of certiorari which we granted. Our jurisdiction over this matter is uncontested.

II. DISCUSSION

{10} Yancey's appeal comes to us following the district court's decision to deny Yancey's motion to withdraw his plea. Typically, this is a matter that we would review for abuse of discretion. *State v. Garcia*, 1996-NMSC-013, ¶ 7, 121 N.M. 544, 915 P.2d 300. But the Court of Appeals took this case in a very different direction when it concluded that the sentences imposed in this case were void because Yancey's pleas were constitutionally invalid. This modified the question we must now answer.

{11} The specific question here is whether the district court committed legal error by not asking Yancey to affirmatively state at the plea colloquy "I plead guilty," or some similar words. The answer to this question requires us to evaluate constitutional principles, statutes, and the rules of criminal procedure. Our review of these matters is de novo. *State v. Lohberger*, 2008-NMSC-033, ¶ 18, 144 N.M. 297, 187 P.3d 162; *State v. Lucero*, 2007-NMSC-041, ¶ 8, 142 N.M. 102, 163 P.3d 489.

{12} Rule 5-303 NMRA "essentially codifie[d]" *Boykin v. Alabama*, 395 U.S. 238 (1969), and requires "an affirmative showing on the record that [a guilty] plea was voluntary and intelligent." *Garcia*, 1996-NMSC-013, ¶ 9. This does not mean, however, that trial courts must "strictly adhere to a script" or are "bound to a strict

unvarying formula of words." *Id.* ¶ 12 (alteration, internal quotation marks, and citation omitted). Rather, the determination of whether a plea is "knowing and voluntary" is assessed by "the totality of the circumstances" available from the record at the time the plea is taken. *Rollings*, 751 F.3d at 1188 (internal quotation marks and citation omitted). This approach is, as Yancey concedes, consistent with other federal authorities.

{13} Those authorities make clear that no "talismanic incantation" of the words "I am guilty" is required in order for a defendant to plead guilty, at least where "the language used is expressive of the defendant's culpability." *United States v. Williams*, 20 F.3d 125, 133-34, 133 n.9 (5th Cir. 1994). Thus, a guilty plea is not invalid simply because the trial court fails, for whatever reason, to specifically ask the defendant how he pleads. *See United States v. Grandia*, 18 F.3d 184, 184 (2d Cir. 1994). Other federal courts have reached the same conclusion under similar circumstances. *E.g.*, *United States v. Luna-Orozco*, 321 F.3d 857, 860-61 (9th Cir. 2003). Persuasive secondary authorities verify these cases are rightly decided. *Guilty Pleas*, 91 Geo. L.J. 362, 372 n.1251 (2003). State courts that have considered the issue have reached the same outcome.

{14} For instance, in *Lane v. State*, 316 S.W.3d 555, 565-567 (Tenn. 2010) the Tennessee Supreme Court concluded that the trial court was not required to ask the

defendant "How do you plead?" The court thought it sufficient that the defendant intended to plead guilty, stated he was entering the plea voluntarily, and believed he was pleading guilty. *Id.* Courts in other jurisdictions have taken the same approach when confronted with similar facts. *State v. Holden*, 32 So.3d 803, 804 (La. 2010) (per curiam); *Neighbors v. State*, 591 S.W.2d 129, 130-31 (Mo. Ct. App. 1979); *State v. Jones*, 355 N.W.2d 227, 230 (Neb. 1984); *State v. Williams*, 515 S.E.2d 80, 82-83 (N.C. Ct. App. 1999); *State v. Gray*, 549 P.2d 1112, 1113 (Or. 1976) (en banc).

{15} Where a reviewing court is presented with a "silent record," it is precluded from drawing inferences about whether the plea was voluntary and intelligent. *Boykin*, 395 U.S. at 243. This is not a case involving a silent record.

{16} Each of the plea agreements Yancey signed includes a header, in bold caps, indicating that the document is a plea agreement. The third line of text on the opening page of each agreement includes the subheading "Plea." To the immediate right of the word "Plea," each states that Yancey "agrees to plead guilty." The third page of each document asks Yancey to affirm by signature that he read and understood the agreements and that, by pleading guilty, he was giving up: his right to a trial by jury; his right to confront, cross-examine, and compel the attendance of witnesses; and his privilege against self-incrimination. Yancey's signature appears only a few lines below these words. The plea documents also include signature lines

for defense counsel that required counsel to certify that he reviewed the plea with Yancey. Yancey's counsel signed on this line in each document.

{17} At the change of plea hearing where the district court received Yancey's pleas, Yancey informed the court that he understood and consented to the terms of the plea agreements, including the range of sentences that the court could impose in all three cases. He acknowledged that, by pleading guilty, it was his intention to give up the important constitutional rights that those who plead guilty relinquish. The court asked Yancey whether he was prepared to "acknowledge and agree that the State has some evidence to prove your guilt of all the charges in all three cases?" Yancey responded affirmatively. The State confirmed aloud in a readily comprehensible manner that it would dismiss certain counts with which Yancey was charged in return for his plea. The plea colloquy ended with the district court asking Yancey directly whether his pleas were "voluntary and not the result of force, threats, or promises other than promises in the plea agreement?" Yancey responded that his pleas were indeed voluntary. Yancey voiced no objection when the district court announced that it was accepting the guilty pleas.

{18} Faced with this evidence, even Yancey's appellate counsel was required to all but concede that there was no basis for arguing that the plea was invalid on federal constitutional grounds. The arguments in Yancey's briefs provide no persuasive

reason why we should diverge from established precedent. Nor has he proved that the totality of the circumstances test—embraced by the federal judiciary and New Mexico—is somehow flawed, or that structural differences or distinctive state characteristics necessitate some different approach.

{19} Similarly, there is nothing in NMSA 1978, Section 30-1-11 (1963), that suggests, as Yancey argues, that a statement expressly acknowledging guilt is a statutory prerequisite to the entry of a guilty plea. This statute has been construed in the flexible manner already discussed. *See State v. Apodaca*, 1969-NMCA-020, ¶¶ 13-14, 22, 80 N.M. 155, 452 P.2d 489. And the plain language of Section 30-1-11 does not, expressly, or by implication, address the steps and procedures required to be followed during the plea process. At this point, our discussion is ended. We conclude with one important caveat.

{20} While Yancey was not required to state on the record "I plead guilty" or some similar variant, the very existence of this present appeal reveals that it is "plainly the better course" of practice for the district court to ask the defendant to "specifically utter the words 'I am guilty.'" *Williams*, 20 F.3d at 134. To be clear, this is not because formalistic incantations unequivocally reveal the intentions of the speaker or because courts can only know the mind of a defendant faced with the choice of whether to plead guilty if he or she says certain, specific words. Rather, it is best

practice to ask the defendant to state that he or she "pleads guilty" as these words are the best evidence the defendant does certainly mean to travel the road he or she has started down. But the fact that this is the best evidence in no way means that certain specific words are a legal prerequisite to a valid plea or can ever function, in and of themselves, as irrefutable proof that the defendant knowingly and voluntarily entered a guilty plea.

III. CONCLUSION

{21} The narrow, bright-line rule the Court of Appeals imposed in this case requiring the formulaic recitation of the words "I plead guilty" (or the like) is inconsistent with New Mexico and federal law. Because the district court did not err when it failed to have Yancey state on the record "I plead guilty," the Court of Appeals conclusion that this perceived error was jurisdictional in nature is moot. Moreover, we need not decide whether it was appropriate for the Court of Appeals to address sua sponte an error that, it turns out, is no error at all. It is sufficient that the Court of Appeals opinion is vacated in its entirety.

{22} We reverse and remand so that the Court of Appeals can consider the issues Yancey argued below. *Yancey*, 2017-NMCA-090, ¶ 15 (identifying the four issues raised but not considered below).

{23} **IT IS SO ORDERED.**

JUDITH K. NAKAMURA, Chief Justice

WE CONCUR:

BARBARA J. VIGIL, Justice

C. SHANNON BACON, Justice

DAVID K. THOMSON, Justice

STAN WHITAKER, Chief Judge
Sitting by designation