

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-000021-MR

SHANNON D. BAKER

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 04-CR-00269

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: STUMBO AND VANMETER, JUDGES; PAISLEY,¹ SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: Shannon D. Baker was tried before a jury and found guilty of driving under the influence of alcohol, fourth or subsequent offense. He was sentenced to serve five years in a state correctional facility. The only issue on appeal involves the enhancement of the charge when a prior conviction from Indiana for driving under the influence was used to elevate the Kentucky charge to a felony.

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Baker objected to the introduction of evidence that showed he had a prior conviction in Indiana for a 2004 offense of driving under the influence of alcohol. His argument is that it was not clear whether he had been informed, when he entered a guilty plea to the Indiana charge, that it could be used in the future to enhance any new charge in Kentucky for driving under the influence. We find no error and affirm the decision of the Henderson Circuit Court.

KRS 189A.010(4)(e) provides that “prior offenses shall include all convictions in this state, and any other state. . .” This section was added to the statute by the Legislature, presumably in response to our decision in *Suttle v. Commonwealth*, 774 S.W.2d 454 (Ky.App. 1989). That addition to the statute specifically overruled *Suttle*.

Baker now argues that his plea to an offense in Indiana may not be used to enhance the current Kentucky charge because there is nothing in the documents presented as proof of that plea to show he knew that the Indiana charge could ultimately be used to enhance a new charge in Kentucky. “[A] prior conviction not meeting applicable case law regarding admissibility of a prior conviction cannot be used to enhance criminal penalties. . .” KRS 189A.310(1). Baker relies on that section of the statute in conjunction with *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) that requires a guilty plea be entered knowingly. He argues that he did not know his guilty plea in Indiana could be used to enhance a future charge in Kentucky and it should therefore be excluded.

“A conviction's possible enhancing effect on subsequent sentences has been held to be merely a collateral consequence of a guilty plea about which a defendant need not be advised. . .” *King v. Dutton*, 17 F.3d 151 (6th Cir. 1994). “[A] defendant need not be advised that a conviction based on a guilty plea can be used in a subsequent prosecution resulting from a pending investigation.” *Id.* “A guilty plea that is brought about by a person's free will is not less valid because he did not know all possible consequences of the plea. . .” *Turner v. Commonwealth*, 647 S.W.2d 500 (Ky.App. 1992). Our analysis of *Boykin* along with the subsequent cases of *King* and *Turner* lead us to the conclusion that, while *Boykin* requires a knowing entry of a guilty plea, it does not require a complete understanding of every possible future collateral effect of that plea.

Baker determined that a guilty plea to the Indiana charge was an appropriate course of action at that time. There is nothing to indicate that the Indiana plea was not entered into in a knowing manner as regards that crime. To require every person who entered a plea of guilty to be able to completely foretell how that plea may be used in the future would lead to “the absurd result that a person pleading guilty would need a course in criminal law and penology.” *Id.*

We find that it was not error to admit the evidence of the prior Indiana conviction against Baker in the trial of the Kentucky charge. Finding no error, we affirm the judgment of the Henderson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Brandon Pigg,
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky