

Ford E. STRAFACI v. STATE of Arkansas

CR 88-217C

778 S.W.2d 602

Supreme Court of Arkansas
Opinion delivered October 30, 1989

1. **CRIMINAL PROCEDURE — FACTUAL BASIS FOR GUILTY PLEA MAY BE SUPPLIED AT POST-CONVICTION RELIEF HEARING. — If evidence at a**

post-conviction hearing supplies the factual basis for a plea of guilty, the failure of the trial court to establish it at the plea hearing is not reversible error.

2. CRIMINAL PROCEDURE — FACTUAL BASIS FOR GUILTY PLEA SUPPLIED BY APPELLANT'S AFFIDAVIT AT POST-CONVICTION RELIEF HEARING. — Where the state, at the Rule 37 hearing, introduced into evidence an affidavit executed by appellant under oath stating that appellant shot the two victims with a shotgun, buried the bodies, and threw the shotgun into a lake; and giving the date and place of the incident, the names of accomplices, and the name of the lake where the gun could be found, the affidavit was sufficient for the trial court to conclude there was a factual basis upon which a fact finder could have found appellant guilty of first degree murder, and thus it supplied a factual basis for the plea.

Appeal from Montgomery Circuit Court; *Gayle Ford*, Judge; affirmed.

David Goldman, for appellant.

Steve Clark, Att'y Gen., by: *C. Kent Jolliff*, Asst. Att'y Gen., for appellee.

DAVID NEWBERN, Justice. This is an appeal from denial of a petition pursuant to Ark. R. Crim. P. 37 on the part of the appellant, Ford E. Strafaci, to set aside a plea of guilty entered in 1983 to a charge of first degree murder. The state concedes that the court's actions in taking the plea did not comply with Ark. R. Crim. P. 24 which requires the court to establish that there is a factual basis for the plea. The issue has thus become whether the evidence taken at the Rule 37 hearing supplied the factual basis for the plea. We hold that it did, and thus the decision of the trial court is affirmed.

[1] If evidence at a post-conviction hearing supplies the factual basis for a plea of guilty, the failure of the trial court to establish it at the plea hearing is not reversible error. *Knee v. State*, 297 Ark. 346, 760 S.W.2d 160 (1988); *Snelgrove v. State*, 292 Ark. 116, 728 S.W.2d 497 (1987). Strafaci argues no such factual basis was established because he testified at the Rule 37 hearing to facts which showed the killing was at least not deliberate and premeditated and at best done in self defense.

[2] At the Rule 37 hearing, the state introduced an affidavit executed by Strafaci which included the following:

On August 22, 1983, in Montgomery County, Arkansas, I shot Larry Lynn Buckelew and Edmond Callen with a shotgun that was given to me in Georgia by Luther Edward Skeels, also known as "Eddie" Skeels. Eddie Skeels knew what I was going to do with the shotgun when he gave it to me, and he aided me in planning how to shoot Larry Lynn Buckelew and Edmond Callen. After the shooting took place I and Travis Smith and Terry Miller buried their bodies, and I then threw the shotgun into Lake Hamilton near Hot Springs, Arkansas.

This affidavit, which was made by Strafacy under oath, was sufficient for the trial court to conclude there was a factual basis upon which a fact finder could have found Strafacy guilty of first degree murder, and thus it supplied a factual basis for the plea. *Knee v. State, supra.*

Affirmed.
