IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER 1999 SESSION

FILED

March 9, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

JEHIEL FIELDS,)
Appellant,) No. E1999-00915-CCA-R3-PC
) Bradley County
v.)
) Honorable R. Steven Bebb, Judge
STATE OF TENNESSEE,) (Post-conviction - underlying offenses: first degree murder and aggravated burglary)
Appellee.)

For the Appellant:

James F. Logan, Jr.
Post Office Box 191
Cleveland, TN 37364-0191

For the Appellee:

Paul G. Summers
Attorney General of Tennessee
and
Elizabeth B. Marney
Assistant Attorney General of Tennessee
425 Fifth Avenue North
Nashville, TN 37243

Jerry N. Estes
District Attorney General
Post Office Box 647
Athens, TN 37303-0647
and
Stephen Davis Crump
Assistant District Attorney General
Post Office Box 1351
Cleveland, TN 37364

OPINION FILED:____________________

AFFIRMED

Joseph M. Tipton
Judge

<u>O P I N I O N</u>

The petitioner, Jehiel Fields, appeals as of right from the Bradley County Criminal Court's denial of his petition for post-conviction relief. The petitioner was

convicted in 1995 of first degree murder and especially aggravated burglary. On appeal, the first degree murder conviction was affirmed, and the especially aggravated burglary conviction was reduced to aggravated burglary. State v. Jehiel Fields, No. 03C01-9607-CC-00261, Bradley County (Tenn. Crim. App. Mar. 18, 1997). The petitioner now alleges that he received the ineffective assistance of counsel because his trial attorney failed to present evidence of intoxication or diminished capacity as defenses and argues that these were the only viable defenses available. The state contends that the trial court properly denied the petition. We affirm the trial court.

The evidence presented by the state at trial showed that on October 22, 1994, the petitioner purchased from the victim a marijuana cigarette, which he believed was laced with PCP. When the petitioner confronted the victim, she stabbed him with a knitting needle. Later, the petitioner decided to confront the victim again and walked to her home, which was close to the party he was attending. The state offered evidence, primarily in the form of testimony from an eyewitness, Travis Ware, to show that the petitioner kicked down the door and shot the victim three times. The petitioner's attorney argued that the evidence pointed to another perpetrator, possibly Mr. Ware, and cross-examined Mr. Ware on inconsistencies between his testimony and earlier statements given to the police. The defense focused on the fact that Mr. Ware led the police to the gun used to shoot the victim and that Mr. Ware agreed to testify against the petitioner pursuant to a plea agreement on an unrelated drug charge.

At the evidentiary hearing, the petitioner's trial attorney testified that the petitioner was vague regarding the events on the night of the incident. The attorney said he and the petitioner discussed the possibility of the petitioner being on drugs at the time of the offense, but he did not remember the petitioner claiming that he was too intoxicated to remember anything. He said that although he considered intoxication or diminished capacity as possible defenses and discussed them with the petitioner, the petitioner always maintained that he did not shoot the victim. Explaining his decision not to pursue intoxication or diminished capacity, the petitioner's attorney testified that:

> Mr. Fields said that he didn't shoot this woman, and so I approached it from the standpoint that Mr. Fields didn't shoot this woman, that there were a lot of other people with the opportunity to have done this . . . . He said, you know, he was, he said, "I didn't do this, I didn't do this shooting." We

> approached it from the standpoint of he didn't do this, he didn't do the shooting.

On redirect examination, the attorney testified that:

> Mr. Fields has never to this date said that he did this shooting. . . . He never told me that, never indicated that to me. Now, whether he was telling me that he just didn't remember, whether he did, I mean my impression was that he just didn't do it, and I'm not exactly sure what he said at different times, but, that, you know, that's certainly possible, that's certainly possible.

The petitioner's attorney testified that at the preliminary hearing, he questioned Travis Ware, who had followed the petitioner to the victim's house when the shooting occurred. He stated that at the preliminary hearing, Mr. Ware testified that the petitioner was "f-ed up" on the night of the shooting. The attorney stated that he questioned other people who were at the party with the petitioner on the night of the offense and that they reported the petitioner being angry and irrational.

The petitioner testified that he never told his attorney that he did not shoot the victim, only that he could not remember anything that happened after he smoked the marijuana cigarette he received from the victim. He denied ever discussing with his attorney intoxication as a possible defense. The trial court denied the post-conviction petition, finding that "what we have here in my opinion is like Monday morning quarterbacking of trial strategy. I feel like based on the circumstances and having heard the trial that [the attorney] made decisions, after consulting with his client, that all went to trial strategy . . . ."

When a claim of ineffective assistance of counsel is made under the Sixth Amendment, the burden is upon the petitioner to show (1) that counsel's performance was deficient and (2) that the deficiency was prejudicial in terms of rendering a reasonable probability that the result of the trial was unreliable or the proceedings fundamentally unfair. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); see Lockhart v. Fretwell, 506 U.S. 364, 368-72, 113 S. Ct. 838, 842-44 (1993). The Strickland standard has been applied to the right to counsel under Article I, Section 9, of the Tennessee Constitution. State v. Melson, 772 S.W.2d 417, 419 n.2 (Tenn. 1989).

In Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975), our supreme court held that attorneys should be held to the general standard of whether the services rendered were within the range of competence demanded of attorneys in criminal cases. Further, the court stated that the range of competence was to be measured by the duties and criteria set forth in Beasley v. United States, 491 F.2d 687, 696 (6th Cir. 1974) and United States v. DeCoster, 487 F.2d 1197, 1202-04 (D.C. Cir. 1973). Also, in reviewing counsel's conduct, a "fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689, 104 S. Ct. at 2065; see Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982).

We also note that the approach to the issue of the ineffective assistance of counsel does not have to start with an analysis of an attorney's conduct. If prejudice is not shown, we need not seek to determine the validity of the allegations about deficient performance. Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The petitioner must show both deficiency and prejudice by clear and convincing evidence. See Tenn. Code Ann. § 40-30-210(f). Since the creation of post-conviction procedures, the findings of the trial court in a post-conviction case have been given the weight of a jury verdict. See Janow v. State, 4 Tenn. Crim. App. 195, 200, 470 S.W.2d 19, 21 (1971). Our long-held standard of review on appeal bound us to the trial court's findings of fact unless we concluded that the evidence preponderated against those findings. Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990). This traditional standard prevented us from reweighing or reevaluating the evidence or substituting our own inferences for those drawn by the trial court. Henley v. State, 960 S.W.2d 572, 579 (Tenn. 1997). Questions concerning the credibility of witnesses and the weight and value to be given to their testimony were resolved by the trial court, not this court. Id. This court has held that it would give due deference to the trial court's findings regarding the ineffective assistance of counsel under the well-settled standard set forth in Henley. Richard C. Taylor v. State, No. 01C01-9707-CC-00384, Williamson County, slip op. at 26 (Tenn. Crim. App. July 21, 1999).

While reaffirming the Henley standard for purely factual issues, our supreme court recently stated that "the issues of deficient performance by counsel and possible prejudice to the defense are mixed questions of law and fact" requiring a de novo review by this court. State v. Burns, 6 S.W.3d 453, 461 (Tenn. 1999). We do not believe that the supreme court intended in one sentence, without further discussion, to overrule sub silentio over thirty years of jurisprudence regarding the standard of review in post-conviction cases. Thus, we believe that the standard of review remains whether the evidence preponderates against the trial court's finding that the petitioner received the ineffective assistance of counsel. In any event, we believe that both standards yield the same result in this case.

The petitioner contends that his attorney was ineffective for failing to raise intoxication or diminished capacity, arguing that in light of the overwhelming proof by the state that the petitioner shot the victim, these were the only viable defenses. At the evidentiary hearing, the petitioner entered into the record the preliminary hearing transcript, in which the following colloquy occurred between the petitioner's attorney and Travis Ware:

> ATTORNEY: So had Mr. Fields been drinking that evening?
>
> WARE: Huh-uh, he didn't even come inside the party.
>
> ATTORNEY: Did he appear to be, have a buzz or be on any type of drugs to you?
>
> WARE: Well if somebody gave you a (inaudible) and they smoked it, it's going to make you f***ed up.
>
> ATTORNEY: Well did he appear in your words to be "f***ed up"?
>
> WARE: Yeah.

At the evidentiary hearing, the petitioner's attorney testified that he spoke with several people who had been with the petitioner on the night of the offense and that they had stated that the petitioner appeared to be angry and irrational.

We hold that the record supports the trial court's denial of the petition. The petitioner presented some evidence at the evidentiary hearing that might arguably support his contention of intoxication at the time of the offense, specifically Mr. Ware's preliminary hearing testimony and the trial attorney's testimony regarding people he

interviewed who had seen the petitioner on the night of the offense. However, Mr. Ware was not present to explain in greater detail his preliminary hearing testimony, nor did the petitioner present any of the witnesses his trial attorney interviewed to explain in what manner and to what degree the petitioner was acting angry or irrational. In the absence of more compelling evidence, the petitioner has simply failed to prove by clear and convincing evidence that his attorney's failure to pursue intoxication or diminished capacity as defenses resulted in prejudice.

In consideration of the foregoing and the record as a whole, we affirm the trial court's denial of the post-conviction petition.

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Joseph M. Tipton, Judge

CONCUR:

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David H. Welles, Judge

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Jerry L. Smith, Judge