IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1997 SESSION

FILED

May 21, 1998

Cecil W. Crowson
Appellate Court Clerk

EDWARD A. WOOTEN,	)	No. 01C01-9702-CC-000067
	)	
Appellant	)	
	)	SEQUATCHIE COUNTY
V.	)	
	)	HON. BUDDY D. PERRY,
STATE OF TENNESSEE,	)	JUDGE
	)	
Appellee.	)	(Post-Conviction)
	)	
	)	

For the Appellant:

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OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

OPINION

The appellant, Edward A. Wooten, appeals as of right the denial in the Sequatchie County Circuit Court of his petition for post-conviction relief. On appeal, the appellant alleges that his counsel was ineffective, that his guilty pleas were not knowingly and voluntarily entered, and that the factual proof was insufficient to support the guilty pleas. Finding no error in the trial court's denial, we affirm the judgment below.

FACTUAL BACKGROUND

In May of 1991, the Sequatchie County Grand Jury indicted appellant on two counts of first degree premeditated murder, two counts of felony murder, especially aggravated robbery, and arson. The charges stemmed from appellant's involvement in the March 2, 1991, murder of Clarence Harvey and his wife, Mattie Harvey, the theft of their money, and a fire set inside the Harvey home. According to statements given by appellant, he and his then girlfriend, Cheryl Holland, knew the victims, entered their home, and shot them each at point-blank range. Appellant and Ms. Holland carried the bodies to the victims' car, placed them in the trunk, and subsequently drove the car into the Tennessee River. Ms. Holland returned to the Harvey home sometime later, removed the substantial savings that she knew the Harveys kept in the home, and set fire to the interior of the home.

Appellant was arrested on April 11, 1991. Ms. Holland fled from authorities and was finally apprehended near Austin, Texas on February 26, 1992. In May of 1992, the State filed notice that it would seek the death penalty against appellant. After extensive plea negotiations, appellant entered a plea agreement with the State. Appellant agreed to plead guilty to two counts of premeditated murder for which he would receive two life sentences. In return for his truthful testimony at trial against Ms. Holland, the State would recommend that the trial court impose concurrent sentences.

The remaining charges in the indictment would be dismissed. The trial court accepted appellant's guilty pleas on June 30, 1992.

Appellant's sentencing was delayed in anticipation of his testimony in Holland's trial. He was finally sentenced on May 14, 1993, after Ms. Holland pled guilty to two counts of first-degree murder. Because appellant prepared to testify against Ms. Holland, the State honored the plea agreement and recommended concurrent life sentences. The trial court sentenced appellant as recommended by the State.

On June 17, 1994, appellant filed the instant petition for post-conviction relief.[1] The petition alleged several constitutional violations, including ineffective assistance of counsel, involuntary guilty pleas, and due process violations. The trial court appointed counsel and an evidentiary hearing was held. The trial court later issued its findings of fact and conclusions of law, ruling that appellant was not entitled to relief.

In order to succeed in a post-conviction petition, the appellant must prove his allegations by a preponderance of the evidence. See McBee v. State, 655 S.W.2d 191, 195 (Tenn. Crim. App. 1983). Upon review, this Court cannot re-weigh or re-evaluate the evidence. We give deference to the trial court's findings on questions about the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence. Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990). Furthermore, the factual findings of the trial court are conclusive on appeal unless the evidence preponderates against the judgment. Id. See also Davis v. State, 912 S.W.2d 689, 697 (Tenn. 1995) (citations omitted); Cooper v. State, 849 S.W.2d 744, 746 (Tenn. 1993) (citation omitted).

I.

Appellant contends that he received the ineffective assistance of counsel in three respects: (1) counsel did not investigate his case properly; (2) counsel failed to have appellant's mental competency evaluated; and (3) counsel failed to adequately

[1]Because appellant's petition was filed in 1994, it is governed by the now-repealed 1986 Post-Conviction Procedure Act. See Tenn. Code Ann. §§40-35-101 - 124 (1990).

explain the plea proceedings to him.[2] After a thorough review of the record, we find no evidence of ineffective counsel.

In reviewing the appellant's Sixth Amendment claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney were within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). To prevail on a claim of ineffective counsel, an appellant "must show that counsel's representation fell below an objective standard of reasonableness" and that the performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687-88, 692, 694, 104 S.Ct. 2052, 2064, 2067-68, 80 L.Ed.2d 674 (1984); Best v. State, 708 S.W.2d 421, 422 (Tenn. Crim. App. 1985). The inability to prove either prong results in failure of the claim. See Strickland, 466 U.S. at 697.

The most difficult burden on an appellant is demonstrating the prejudice he has suffered by the alleged error. In order to prevail on that ground, the appellant must show a reasonable probability that but for counsel's error, the result of the proceeding would have been different. Id. In the context of a guilty plea, the appellant must show that but for counsel's errors he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). See also Wade v. State, 914 S.W.2d 97, 101 (Tenn. Crim. App. 1995); Wilson v. State, 899 S.W.2d 648, 653 (Tenn. Crim. App. 1994).

Appellant testified at the evidentiary hearing that counsel did not investigate his case. In spite of his requests for information, he said that counsel never told him about the State's witnesses, the physical evidence, or the nature of the State's case against him. Although appellant never suggested any witnesses to interview, he did inquire of counsel about the gun used in the murder and the stolen money and

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[2]These were the only grounds discernible from appellant's brief. Several allegations of ineffectiveness are merely conclusive statements without any factual support. While cognizant of appellant's *pro se* status, we decline to find wholesale ineffectiveness of counsel premised solely upon statements such as, "The evidence of the Transcripts speak for themselves."

whether they were recovered. He also requested counsel to file a motion for a speedy trial and a motion to suppress statements made to law enforcement officials.

Philip Condra, the District Public Defender, was appointed lead counsel in appellant's case. Mr. Condra, an accomplished attorney of twenty-three years, testified at the evidentiary hearing about his investigation of the case. He stated that he interviewed appellant's family, obtained his school records, and had extensive discussions with appellant about his background and relationships. Mr. Condra also stated that he requested, received, and reviewed all discovery materials, visited the scene of the crime, and also visited the TBI offices in Chattanooga where appellant had been questioned. Mr. Condra's time records, introduced at the hearing, reflect that he and his investigator spent a total of 226 hours on appellant's case.

Mr. Condra filed a motion to suppress appellant's three statements made to law enforcement. He stated that the suppression issue was his biggest concern because appellant's statements were extremely incriminating.[3] After a lengthy suppression hearing, however, the motion was overruled. In addition, Mr. Condra explained that he did not file a motion for speedy trial because it would have been detrimental to the appellant's case. Based on Condra's experience, the motion would have been granted and a trial date would have been set within seven days. Mr. Condra believed that a speedy trial ruling would have interfered with the motion to suppress.

Howell G. Clements, co-counsel in appellant's case, was appointed over one year after appellant's arrest.[4] He began working on the case May 18, 1992, only forty-three days prior to the entry of the guilty pleas. During that short period, Mr. Clements spent over 41 hours on appellant's case. His time records reflected at least four meetings with appellant prior to entry of the plea on June 30, 1992.

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[3]Appellant's statements led law enforcement officials to the discovery of the Harveys' car in the river and the bodies inside the trunk.

[4]Co-counsel was not appointed until the State filed notice that it was seeking the death penalty.

In its order denying appellant's petition, the trial court found no deficiency in counsels' investigation, nor their efforts in communicating with appellant. We find nothing in the record to preponderate against that judgment. Our review of Mr. Condra's time records reflects a thorough and complete investigation.[5] Counsel spent a substantial amount of time on appellant's case, filed numerous motions on his behalf, and represented appellant zealously. Both Mr. Condra and Mr. Clements believed there was a substantial risk that appellant would receive the death penalty if tried by a jury. Clearly, counsels' efforts in negotiating the plea agreement eliminated that danger.

Neither can we say that counsel erred in declining to file a motion for speedy trial. As the trial court found, a grant of that motion would have interfered with counsels' time to prepare and negotiate. We give deference to counsel's tactical decision in that regard. Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982) (citations omitted). See also Cooper v. State, 849 S.W.2d 744, 746 (Tenn. 1993).

Appellant also claims that his counsel was ineffective for failing to have his mental competency evaluated. He asserts that any person charged with first degree murder should be evaluated for mental competency. However, appellant admitted at the evidentiary hearing that he has no history of mental or emotional problems and that he was not suffering from any mental condition during the crime or while represented by counsel. He further conceded that he never told counsel that he had a mental illness.

Similarly, Mr. Condra testified that he had no reason to believe appellant needed a mental evaluation or that there was any evidence to support an insanity defense. He discussed those issues with appellant in the first interview and found no basis on which to pursue them. Mr. Clements concurred that there was no basis for an insanity defense. Although he contacted a psychologist about appellant's case, Mr.

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[5]We also note that on two occasions at the guilty plea hearing, appellant indicated that his attorneys did not fail to do anything that he asked.

Clements explained that it was for the sole purpose of mitigation in the sentencing phase.

The trial court found that a competency evaluation was unnecessary in appellant's case. We agree. Appellant himself admitted that he had no mental problems at the time of the crime. From counsels' interactions with appellant, they found no basis for an insanity defense or any indication of incompetency. It would place an undue burden on counsel to require a mental competency evaluation in the absence of any factual basis. Counsel was not ineffective in this regard.

Appellant also complains that counsel failed to adequately explain the plea agreement to him. He testified that he did not complete the seventh grade and that he was illiterate. He also stated that no one read the plea agreement to him. Conversely, Mr. Condra testified that he was aware of appellant's educational level and read everything to him. He went over the plea agreement in detail with appellant and revised it on several occasions based upon appellant's requests.

Mr. Clements testified that he was confident he explained the plea agreement and the penalty to the appellant. He stated that the initial draft of the agreement was read to appellant at least twice. In addition, Mr. Clements indicated that he routinely reads the plea agreement to his clients, regardless of their education. The trial court accredited the testimony of appellant's counsel and ruled that counsel provided effective assistance. We will not disturb that determination on appeal. Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990).

II.

The appellant next contends that his guilty pleas were not made knowingly and voluntarily. The transcript from appellant's guilty plea hearing was introduced at the post-conviction hearing. Our review of that transcript reveals no infirmities in the plea process and reflects a voluntary and knowing plea. See Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274; State v. Mackey, 553 S.W.2d 337 (Tenn. 1977);

Tenn. R. Crim. P. 11. Furthermore, the record demonstrates that appellant was fully apprised of and understood the serious penalty associated with his pleas.

Appellant, nevertheless, insists that his guilty pleas were not made knowingly and voluntarily because he was taking medication which affected his ability to understand his actions. He testified that he was taking several medications at the time he entered his pleas. One medication, prescribed for an injury appellant received in jail, allegedly affected his ability to walk and talk, caused him to sleep all the time, and interfered with his concentration.

The appellant introduced medical records from the jail in which he was incarcerated. While those records reflect a number of medications prescribed for the appellant between 1991 and 1993, it is unclear what types of medicine he was taking at the time of his plea. Moreover, there was absolutely no proof at the evidentiary hearing concerning what effect those substances may have had on appellant's mental state or his comprehensive ability.[6] Furthermore, counsel testified that there was no indication that appellant was under the influence of a drug on the day he entered his pleas.

Without some corroboration, appellant's testimony is insufficient to demonstrate that the medications affected his ability to understand the nature of his guilty pleas. See James E. Martin v. State, No. 03C01-9601-CR-00047 (Tenn. Crim. App. at Knoxville, August 20, 1996), perm. app. denied (Tenn. 1996) (rejecting claim of involuntary guilty plea in absence of proof that medication interfered with petitioner's ability to knowingly and voluntarily plead guilty). Appellant has failed to carry his burden of proof and is entitled to no relief on this issue.

Appellant also asserts that his pleas were not knowing and voluntary because of incorrect information provided by counsel. Appellant testified that Mr. Condra

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[6]The trial court requested that appellant's counsel submit proof relevant to the effect of the medications on appellant. Although counsel agreed to submit affidavits from a pharmacist, there are none in the record before us.

guaranteed that he would spend only nineteen years in prison as a result of his two guilty pleas. Appellant also stated that he believed the figure would be reduced by thirty to thirty-five percent. According to appellant, that is why he pled guilty. In spite of those claims, he admitted signing the plea agreement which stated he would receive two life sentences. Although appellant had nearly a year to consider the consequences of his guilty pleas before he was sentenced, he did not withdraw his pleas or mention to the trial court that he expected only a nineteen-year sentence.

Mr. Condra testified that he often calculates the minimum time a defendant will serve in prison. However, he cautions defendants that they may have to serve every day of their sentence. Based on statistics he had at that time, Mr. Condra testified that he likely told appellant that he would have to serve between nineteen and twenty-two years before becoming eligible for parole.[7] However, he stated he would have never "guaranteed" that appellant would serve only nineteen years. Mr. Condra also testified that he is careful to emphasize to defendants that his calculations are merely the earliest time a defendant may be considered for release.

Mr. Clements testified that he was present when Mr. Condra and appellant discussed how much time appellant would serve. However, he was unable to remember whether any specific numbers were discussed. Nevertheless, he was certain that neither he nor Mr. Condra guaranteed appellant that he would be out of prison in nineteen years.

Appellant claims in this regard that counsel gave him erroneous advice which he relied upon to plead guilty. With that misinformation, he argues he could not have entered his pleas knowingly and voluntarily. In order for the appellant to prevail on this issue, he must prove both that counsel's advice was erroneous and that he relied upon that advice to his detriment; i.e. he would not have pled guilty. Hill v. Lockhart,

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[7]No proof was introduced at the evidentiary hearing to demonstrate whether this calculation was incorrect. The appellant was sentenced prior to enactment of the statute requiring service of twenty-five years on a life sentence before becoming eligible for parole. See Tenn. Code Ann. §40-35-501(g)(1) (Supp. 1993).

474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). There is ample evidence in the record that appellant was advised of the nineteen-year estimate. In its ruling the trial court implied, and we agree, that such advice was incorrect.

However, the trial court also found, contrary to appellant's claims, that appellant did not reasonably rely on that information in making his decision to plead guilty. In essence, the trial court discredited appellant's testimony and remarked that he was "an accomplished liar" who "selects facts to remember [and] creates facts when they do not exist." As we stated earlier, we will not interfere with the trial court's credibility determination. Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990). Because appellant has failed to prove prejudice, his claim must fail. See Hill, 474 U.S. at 60.

III.

Finally, appellant argues that the evidence was insufficient to support his guilty pleas. We first note that an insufficient factual basis for a guilty plea does not rise to the level of a constitutional violation and, therefore, is not a ground cognizable in a post-conviction proceeding. See Powers v. State, 942 S.W.2d 551, 555-56 (Tenn. Crim. App. 1996); Bentley v. State, 938 S.W.2d 706, 712 (Tenn. Crim. App. 1996). Thus, even if appellant were able to demonstrate a deficiency, he would not be entitled to relief.

However, appellant's claim fails on the merits as well. When entering into the plea agreement with the State, the appellant executed a memorandum of understanding which included a statement of facts to which appellant would testify at Ms. Holland's trial. In that memorandum, appellant admitted procuring the gun for the murders, accompanying Ms. Holland to the Harvey residence, and shooting Mr. Harvey.[8] Appellant also admitted assisting Ms. Holland with disposal of the bodies.

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[8] In that statement of facts, appellant claimed that Ms. Holland shot Mrs. Harvey.

*Judge Jones died on May 1, 1998, following a distinguished career as a trial attorney and as a respected member of this Court since his appointment in November, 1986. He will be greatly missed.

Those facts are certainly adequate to support appellant's guilty pleas on two counts of first degree murder.

Moreover, the memorandum was drafted and revised by appellant's counsel based upon appellant's suggestions. Appellant's signature appears on the document and the same facts were presented to the trial court without objection at the plea hearing. Appellant declined the trial court's invitation to make a statement after the facts were read into the record. As a result, appellant's pleas were based wholly upon facts submitted by him and he cannot be heard to challenge them on appeal.

CONCLUSION

After a thorough review of the record, the findings of fact and conclusions of law, we find no constitutional error entitling appellant to post-conviction relief. Accordingly, the judgment of the trial court is affirmed.

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William M. Barker, Judge

____(Not Participating)*_____
Joe B. Jones, Presiding Judge

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Paul G. Summers, Judge