

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs June 25, 2020

FILED

11/30/2020

Clerk of the  
Appellate Courts

**JERMARLON SANDERS v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**No. 16-03112      Chris Craft, Judge**

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**No. W2019-01797-CCA-R3-PC**

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The Petitioner, Jermarlon Sanders, appeals the Shelby County Criminal Court’s denial of post-conviction relief from his conviction of aggravated robbery, for which he received an eight-year term of imprisonment. In his appeal, the Petitioner argues that his guilty plea was unknowingly and involuntarily entered based on the ineffective assistance of trial counsel. Upon review, we affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3, Appeal as of Right; Judgment of the Criminal Court Affirmed**

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, P.J., and ALAN E. GLENN, J., joined.

Constance Wooden Alexander, Memphis, Tennessee, for the Petitioner, Jermarlon Sanders.

Herbert H. Slatery III, Attorney General and Reporter; Katharine K. Decker, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Jose Leon, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

This case stems from the January 17, 2016 aggravated robbery of the victim, Kevin Nguyen, by the Petitioner and his cousin, co-defendant James Moss, in Memphis, Tennessee. The Petitioner was indicted on May 5, 2016, and almost two years later, on March 15, 2018, the case was set for the Petitioner to either enter a guilty plea or to request a trial date. At the beginning of this setting, the trial court explained its policy of not accepting a negotiated settlement or guilty plea after a case is set for trial. The Petitioner replied he did not want a trial, and he was under the impression the co-defendant “was trying to take full responsibility for this charge.” When the trial court explained that the co-defendant “took no responsibility for this . . . [and advised the court] there wasn’t even

a gun” involved, the Petitioner again repeated that he did not want to go to trial. The Petitioner then asked the trial court if his other, minor cases may “be resolved” before he proceeded to trial in the instant case, to which the trial court explained that the State selected the order of prosecution. After more discussion, the Petitioner requested to speak with his attorney in private, which was permitted by the trial court. A short time later, the State announced it had the guilty plea paperwork ready to proceed in the matter.

The Petitioner stipulated to the following factual basis in support of his guilty pleas:

[O]n [July 11, 2014], Officers Cole and Howard responded to a burglary of a business at 3870 on New Getwell Road. After arriving on the scene, officers went to check the rear of the business and observed the [Petitioner] run out the rear of the building holding a white box.

Officer Cole chased individual north bound along the train tracks carrying the white box from inside the business of . . . Woodson and Bozeman. Officer Cole also observed this individual jump the fence on the north side of the building and attempted to flee. (Indiscernible) was set up in the area and the suspect was located. He was located behind a couple of pallets by Officer Robins.

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[O]n [January 16, 2016,] . . . Officer Baker responded to a robbery of an individual at 1391 Elvis Presley. Upon arrival, the victim, Mr. Nguyen advised that he closed his business and was walking to his vehicle when he was approached by two individuals.

Victim, Nguyen stated that one of the individuals pulled out a black handgun and told him to drop his bag. Victim, Nguyen stated that he dropped his [b]ag and backed up. The victim stated a second suspect picked up the bag and ran towards a white GMC Yukon or Chevy Tahoe. The victim stated the suspect with a handgun walked away from this location.

The victim also stated that . . . his bag contained his [M]acbook, his passport, Social Security cards, American Express cards, and child’s passports and Social Security cards inside this bag. A little . . . later at 9:07 p.m., Officers Jefferson and Hawthorne observed a white GMC Yukon, tag W2876H, ma[k]e a u-turn in the area of south third. The individuals pulled up to ask the officers for directions.

Officers realized the Yukon matched the broadcast description of the suspect vehicle. They checked the driver's suspect and realized . . . that the individual driving was [the Petitioner] . . . and discovered that he had several outstanding warrants, and he was placed under arrest. The other individual, James Moss, the codefendant was—in the passenger side of the vehicle was asked to get out.

When he got out, passport, Social Security cards, and American Express cards taken . . . from the victim, Mr. Nguyen fell out onto the street. The handgun and [M]acbook were not located. Officers also located four white pills in the center consoles. Both suspects were arrested and transported to Felony Response. They refused to give a statement at this point. These events occurred here in Shelby County, Tennessee.

[The Petitioner] finally pleading to Indictment 17-04532 to the offense of theft of property over \$1,000, a Class D felony. . . . The State recommends two years as a Range One Standard Offender, and as stated before, consecutive to the previous two Indictments, 16-03112 and 16-04473. The facts in this case would have been that on [October 15, 2016], officers responded to an auto theft at 3714 Skylar Road.

The victim, Mr. David Jenkins advised his 1996 Chevy Silverado was parked in front of a mechanic's house, Mr. Pruitt. The victim advised that Pruitt called him and advised him that his son . . . the vehicle was being towed. On [October 18], a representative spoke to this individual, Detective Garrett, and he presented a buyer seller agreement which showed that [the Petitioner] . . . was the seller on [October 15, 2016].

[The Petitioner] is the son of the mechanic where the vehicle was parked. On [October 30], David Jenkins, the victim[] came to Ridgeway Station and gave a statement. He advised that no one has permission to have possession of his vehicle, and he wishes to prosecute. The vehicle taken was valued at \$2,783.

(as written).

The trial court engaged the Petitioner in an extensive discussion regarding the rights which the Petitioner would waive by entering a guilty plea. After a plea colloquy, the trial court found that the Petitioner had entered his plea knowingly and voluntarily and accepted the plea agreement. For the aggravated robbery, the Petitioner was sentenced to an eight-

year term of imprisonment.<sup>1</sup> The Petitioner filed a pro-se petition for post-conviction relief on May 23, 2018, alleging as follows:

ineffective assistance of counsel because this charge should have been a lesser offense on my behalf and due to the involuntary guilty plea because my co-defendant was pointed out and arrested with the victim belongings (not me).

The facts which support these grounds are my attorney coerced me into signing and lied to me several time to get a guilty plea and the involuntary guilty plea facts are I was pressured into going to trial on the day of signing for my time. On that particular day March, 2018 the 16<sup>th</sup> my options was sign today or go to trial. I was scared ... so I signed.

(as written). Post-conviction counsel filed a notice that the Petitioner would not be filing an amended petition.

A post-conviction hearing was held on July 26, 2019, during which the Petitioner and trial counsel testified. Trial counsel testified that he filed the appropriate pre-trial motions, obtained discovery, and discussed the merits of both trial and a guilty plea. On cross-examination, trial counsel testified that he had been practicing law for thirteen years at the time of the Petitioner's guilty plea, with ninety-eight percent of his practice in criminal law. Trial counsel testified that he extensively negotiated a plea agreement with the State, but was ready to go to trial if that is what the Petitioner decided. On redirect, trial counsel testified that the Petitioner was hesitant about pleading guilty, but decided to plead guilty after the trial court explained to him the ramifications of being found guilty at trial.

The Petitioner testified that he received discovery from trial counsel and spoke with trial counsel "several times" about his trial strategy. The Petitioner believed that trial counsel was ineffective for failing to sever his case from his co-defendant and for failing to reduce his charges from aggravated robbery down to robbery. The Petitioner testified that he had "bought a dream" that he would be released in "five, six years at the most." The Petitioner also testified that he was high on marijuana at the time of his guilty plea and would not have entered a guilty plea had he been sober. The Petitioner testified that he was afraid of the severity of the charges he was facing and decided that eight years in prison would be better than losing at trial and being sentenced to twenty years' imprisonment.

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<sup>1</sup> As part of his guilty plea, the Petitioner also simultaneously entered guilty pleas to burglary of a building and theft of property over \$1,000, for which he received a two-year concurrent term of imprisonment and a consecutive two-year term of imprisonment, respectively, for an effective ten-year term of imprisonment in this matter.

On cross-examination, the Petitioner admitted that he had four previous felony convictions and was well acquainted with the criminal justice system. The Petitioner conceded that the trial court discussed the terms of his plea agreement at length and that he freely chose to plead guilty to receive a lesser sentence. When asked to explain how trial counsel was untruthful to him, the Petitioner testified that trial counsel did not lie to him, but rather “convinced [him] that an 8 would be better than going to trial and getting [...] 17, 18 19 years.”

By written order, the post-conviction court denied relief on September 6, 2019. In the order, the post-conviction court found that the Petitioner had produced no evidence that trial counsel had coerced him into pleading guilty, or that trial counsel had been deficient in his representation. The post-conviction court found that “there is no question that the [P]etitioner understood what he was doing and well understood his options.” The trial court also found the Petitioner’s testimony that he was intoxicated at the time of his guilty plea to be unbelievable and specifically accredited the testimony of trial counsel. The post-conviction court described the Petitioner’s arguments at the post-conviction hearing as a plea “for mercy so that he could be released from prison because he wanted to get back with his family, not because [trial counsel] had done anything wrong.” The Petitioner filed a timely notice of appeal on October 7, 2019.

### **ANALYSIS**

On appeal, the Petitioner argues that his guilty plea was unknowing and involuntary because he was under the influence of marijuana at the time of the plea, and because trial counsel and the trial court unfairly pressured him to plead guilty. In response, the State contends that the facts at the post-conviction hearing do not preponderate against the determination of the post-conviction court. We agree with the State.

Post-conviction relief is only warranted when a petitioner establishes that the conviction is void or voidable because of an abridgement of a constitutional right. Tenn. Code Ann. § 40-30-103. The Tennessee Supreme Court has held:

A post-conviction court’s findings of fact are conclusive on appeal unless the evidence preponderates otherwise. When reviewing factual issues, the appellate court will not re-weigh or re-evaluate the evidence; moreover, factual questions involving the credibility of witnesses or the weight of their testimony are matters for the trial court to resolve. The appellate court’s review of a legal issue, or of a mixed question of law or fact such as a claim of ineffective assistance of counsel, is de novo with no presumption of correctness.

Vaughn v. State, 202 S.W.3d 106, 115 (Tenn. 2006), abrogated (on other grounds) by Brown v. Jordan, 563 S.W.3d 196, 202 (Tenn. 2018) (internal quotation and citations omitted). “The petitioner bears the burden of proving factual allegations in the petition for post-conviction relief by clear and convincing evidence.” Id. (citing Tenn. Code Ann. § 40-30-110(f); Wiley v. State, 183 S.W.3d 317, 325 (Tenn. 2006)). Evidence is considered clear and convincing when there is no serious or substantial doubt about the accuracy of the conclusions drawn from it. Hicks v. State, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998) (citing Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 n. 3 (Tenn. 1992)).

Vaughn further repeated well-settled principles applicable to claims of ineffective assistance of counsel:

The right of a person accused of a crime to representation by counsel is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. Both the United States Supreme Court and this Court have recognized that this right to representation encompasses the right to reasonably effective assistance, that is, within the range of competence demanded of attorneys in criminal cases.

Vaughn, 202 S.W.3d at 116 (internal quotations and citations omitted).

In order to prevail on an ineffective assistance of counsel claim, the petitioner must establish that (1) his lawyer’s performance was deficient and (2) the deficient performance prejudiced the defense. Id. (citing Strickland v. Washington, 466 U.S. 668, 687 (1984); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975)). “[A] failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim. Indeed, a court need not address the components in any particular order or even address both if the [petitioner] makes an insufficient showing of one component.” Goad v. State, 938 S.W.2d 363, 370 (Tenn. 1996) (citing Strickland, 466 U.S. at 697).

A petitioner successfully demonstrates deficient performance when the petitioner establishes that his attorney’s conduct fell below “an objective standard of reasonableness under prevailing professional norms.” Id. at 369 (citing Strickland, 466 U.S. at 688; Baxter, 523 S.W.2d at 936). Prejudice arising therefrom is demonstrated once the petitioner establishes “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 370 (quoting Strickland, 466 U.S. at 694). In order to satisfy the “prejudice” requirement in the context of a guilty plea, the petitioner must show that, but for counsel’s errors, he would not have entered his guilty plea and would have proceeded to trial. Serrano v. State, 133 S.W.3d 599, 605 (Tenn. 2004) (citing Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

We note that “[i]n evaluating an attorney’s performance, a reviewing court must be highly deferential and should indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” State v. Burns, 6 S.W.3d 453, 462 (Tenn. 1999) (citing Strickland, 466 U.S. at 689). Moreover, “[n]o particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” Strickland, 466 U.S. at 688–89. However, we note that this “‘deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation.’” House v. State, 44 S.W.3d 508, 515 (Tenn. 2001) (quoting Goad, 938 S.W.2d at 369).

As we understand his argument, the Petitioner alleges that trial counsel was ineffective for allowing him to plead guilty while high on marijuana and that trial counsel pressured him to accept a plea agreement rather than go to trial. In denying relief, the post-conviction court found that the Petitioner’s testimony was “not in the least credible.” Additionally, the Petitioner did not put forth any testimony that his attorney had coerced him in any way or allege that he was intoxicated prior to the post-conviction hearing. The post-conviction court found that it was “obvious” that the Petitioner “decided to waive his right to trial and take the State’s offer.” The post-conviction court found that the Petitioner had not presented any proof of ineffective representation, and the record supports the determination of the post-conviction court. The testimony of both the Petitioner and trial counsel show that trial counsel met with the Petitioner on multiple occasions and that trial counsel thoroughly explained the pros and cons of pleading guilty and proceeding to trial. At the guilty plea hearing, the trial court thoroughly explained the Petitioner’s rights and the consequences of pleading guilty before determining that the Petitioner had knowingly and voluntarily waived his right to a jury trial. The Petitioner engaged the trial court with multiple questions and discussed his plea agreement with counsel before entering the guilty plea in this case. The Petitioner has failed to establish that he was intoxicated prior to entering his guilty plea or that trial counsel was ineffective. He is not entitled to relief.

### **CONCLUSION**

We affirm the judgment of the post-conviction court.

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CAMILLE R. MCMULLEN, JUDGE