

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 5, 2014

DERRICK TAYLOR v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Shelby County
No. 10-03281 Glenn Wright, Judge**

No. W2013-02053-CCA-R3-PC - Filed November 10, 2014

The petitioner, Derrick Taylor, appeals the denial of his petition for post-conviction relief, arguing that the post-conviction court erred in finding that his guilty pleas were knowing and voluntary. Following our review, we affirm the denial of the petition.

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

ALAN E. GLENN, J., delivered the opinion of the Court, in which THOMAS T. WOODALL, P.J., and ROGER A. PAGE, J., joined.

Sean H. Muizers, Memphis, Tennessee, for the appellant, Derrick Taylor.

Herbert H. Slatery, III, Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Rachel Russell, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On May 11, 2010, the Shelby County Grand Jury returned a four-count indictment charging the petitioner with possession of .5 grams or more of cocaine with the intent to sell, possession of .5 grams or more of cocaine with the intent to deliver, possessing a firearm during the commission of a dangerous felony, and possession of marijuana. On November 2, 2011, the petitioner pled guilty in the Shelby County Criminal Court to possession of .5 grams or more of cocaine with the intent to sell or deliver, a Class B felony, and possession of a firearm during the commission of a dangerous felony, a Class C felony. Pursuant to the terms of his negotiated plea agreement, the petitioner was sentenced as a Range I, standard offender to eight years for the possession of cocaine count and to three years at 100% for the

firearms count, with the sentences to be served consecutively, for an effective sentence of eleven years in the Department of Correction. The remaining two counts of the indictment were nolle prosequied.

At the guilty plea hearing, the prosecutor recited the factual basis for the pleas:

And Your Honor, had these cases gone to trial, the facts essentially would have been as follows:

As to the drug case, October the 15th [of] 2009 about 7:20 p.m. organized crime officers with the Memphis Police Department executed a search warrant at 1508 Raynor in Memphis Shelby County.

They announced their presence. The officers then had to force their way into the house. They found [the petitioner] inside. There were some other individuals inside.

They also found an SKS rifle with a certain serial number.

They continued the search. They found [the petitioner] in a rear bedroom closet hiding. When [the petitioner] walked out of the closet, he was seen to drop a clear plastic bag which contained two bags of what appeared to be and tested positive for marijuana and four bags of what appeared to be and tested positive for crack cocaine along with a black .45 caliber high point pistol, serial number – a certain identified serial number.

The officers [sic] were questioned about the narcotics. Mr. Derrick Matthews said that he was the one whose dope it was. He said that's my dope and he also said that the co-defendant was in charge of the guns.

The co-defendant, [the petitioner], said to the officers, yes, the guns were his.

Officers found a quantity of cash. \$1,232.00. Mr. Derrick Matthews also was in possession of a bag of marijuana which weighed 1.42 grams.

The total weight of marijuana was just over eight grams. The total weight of crack cocaine was over thirty-six grams.

On June 4, 2012, the petitioner filed a *pro se* petition for post-conviction relief in

which he raised a number of claims, including ineffective assistance of counsel and unknowing and involuntary guilty pleas. Post-conviction counsel was appointed and an amended petition filed on January 7, 2013, in which the petitioner alleged that his trial counsel was deficient in his representation because he failed to adequately communicate with the petitioner, failed to properly investigate or prepare the case for trial, and failed to file motions to suppress the evidence and to dismiss the case on double jeopardy grounds. The petitioner further alleged that counsel's deficiencies led to his entry of unknowing and involuntary guilty pleas.

At the evidentiary hearing, the petitioner complained that his trial counsel never visited him when he was in jail and only met with him for a few minutes on the approximately five different occasions when he was brought to court. He also complained that counsel never provided him with a copy of the search warrant and refused his request to file a motion to suppress the results of the search, telling him that she could not challenge the validity of the warrant. He testified he wanted counsel to call his mother, father, and siblings as witnesses because they would have been able to tell the court that they had seen him with a gun. The petitioner went on to explain that he felt he had been wrongly charged with possession of drugs because his co-defendant had informed the narcotics officers at the scene that the drugs were his, while the guns belonged to the petitioner. The petitioner stated that his trial counsel failed to investigate that aspect of the case.

The petitioner testified that his case was originally set in Division 6 but was dismissed and later brought in Division 2, which he believed constituted a double jeopardy violation. According to the petitioner, he complained to the trial court about trial counsel's representation, but the court refused to replace her with different counsel. Because he was unhappy with counsel's performance and had no confidence in her ability to handle a trial, he felt he had no other choice than to enter his guilty pleas. On cross-examination, the petitioner claimed that counsel never went over the plea agreement with him. He acknowledged, however, that the trial court informed him of his rights at the plea colloquy and that he assured the court that he understood his pleas, was satisfied with the representation of counsel, and was voluntarily, intelligently, and knowingly pleading guilty.

On redirect examination, the petitioner testified that he felt coerced into entering his pleas and, thus, had not been fully honest with the trial court when he said he understood his plea agreement and was satisfied with counsel's representation. The petitioner acknowledged to the post-conviction court, however, that he had four prior felony convictions and had "been around [the criminal court system] for a long time" at the time he entered the pleas.

Trial counsel, an assistant public defender for thirteen and a half years, testified that she represented the petitioner from the time her office was appointed until he entered his guilty pleas. She said she reviewed with the petitioner the plea agreement and the rights he was waiving by entering his pleas and that he appeared to understand the pleas and sentences and to have no problems entering his pleas. On cross-examination, she testified that, although she could not recall whether she ever met with him at the jail, she “repeatedly talked to him about his case,” provided and reviewed with him discovery materials, and gave him a copy of the search warrant. She explained that the petitioner had no standing to contest the validity of the search warrant because it was issued for his co-defendant and his co-defendant’s home. She also explained that there were no grounds for filing a motion to dismiss the case on the basis of double jeopardy, testifying that she believed that before she began her representation, the petitioner had filed a motion for speedy trial or speedy indictment, which may have been dismissed, but that the case had not been indicted or set before a judge or jury. She further testified that the petitioner mentioned his parents as possible witnesses but that she spoke with them and they had no knowledge of what had happened. Finally, she testified that the petitioner, based on his prior record, would have qualified for Range II sentencing had he been convicted at trial.

On August 15, 2013, the post-conviction court entered an order denying the petition. Among other things, the court found that trial counsel was an experienced defense attorney, conducted an adequate investigation of the case, and met with and discussed all viable defenses with the petitioner. The court further found that the transcript of the guilty plea hearing revealed that the petitioner understood the consequences of his guilty pleas. Accordingly, the court concluded that the petitioner’s guilty pleas were freely, knowingly, and intelligently entered. Thereafter, the petitioner filed a timely appeal to this court.

ANALYSIS

On appeal, the petitioner contends that the post-conviction court erred in finding that his guilty pleas were knowing and voluntary, arguing that there is “no substantial doubt that his plea was not voluntarily given.” In support, he cites his testimony at the evidentiary hearing that he felt coerced by the circumstances, which included his dissatisfaction with counsel’s representation, into pleading guilty. We conclude, however, that the record fully supports the post-conviction court’s findings that the petitioner received effective assistance of counsel and that his guilty pleas were knowing, intelligent, and voluntary.

Post-conviction relief “shall be granted when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” Tenn. Code Ann. § 40-30-103 (2012). The petitioner bears the burden of proving factual allegations by clear and convincing evidence.

Id. § 40-30-110(f). When an evidentiary hearing is held in the post-conviction setting, the findings of fact made by the court are conclusive on appeal unless the evidence preponderates against them. See Wiley v. State, 183 S.W.3d 317, 325 (Tenn. 2006). When reviewing factual issues, the appellate court will not reweigh the evidence and will instead defer to the post-conviction court's findings as to the credibility of witnesses or the weight of their testimony. Id. However, review of a post-conviction court's application of the law to the facts of the case is *de novo*, with no presumption of correctness. See Ruff v. State, 978 S.W.2d 95, 96 (Tenn. 1998).

To establish a claim of ineffective assistance of counsel, the petitioner has the burden to show both that trial counsel's performance was deficient and that counsel's deficient performance prejudiced the outcome of the proceeding. Strickland v. Washington, 466 U.S. 668, 687 (1984). The deficient performance prong of the test is satisfied by showing that "counsel's acts or omissions were so serious as to fall below an objective standard of reasonableness under prevailing professional norms." Goad v. State, 938 S.W.2d 363, 369 (Tenn. 1996) (citing Strickland, 466 U.S. at 688; Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975)). The prejudice prong of the test is satisfied by showing a reasonable probability, *i.e.*, a "probability sufficient to undermine confidence in the outcome," that "but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. In the context of a guilty plea, the petitioner must show a reasonable probability that were it not for the deficiencies in counsel's representation, he or she would not have pled guilty but would instead have insisted on proceeding to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985); House v. State, 44 S.W.3d 508, 516 (Tenn. 2001).

Before a guilty plea may be accepted, there must be an affirmative showing in the trial court that it was voluntarily and knowingly entered. Boykin v. Alabama, 395 U.S. 238, 242 (1969); State v. Mackey, 553 S.W.2d 337, 340 (Tenn. 1977). This requires a showing that the defendant was made aware of the significant consequences of the plea. State v. Pettus, 986 S.W.2d 540, 542 (Tenn. 1999) (citing Mackey, 553 S.W.2d at 340). A plea is not "voluntary" if it results from ignorance, misunderstanding, coercion, inducements, or threats. Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993). The trial court must determine if the guilty plea is "knowing" by questioning the defendant to make sure he or she fully understands the plea and its consequences. Pettus, 986 S.W.2d at 542; Blankenship, 858 S.W.2d at 904.

Because the plea must represent a voluntary and intelligent choice among the alternatives available to the defendant, the trial court may look at a number of circumstantial factors in making this determination. Blankenship, 858 S.W.2d at 904. These factors include: (1) the defendant's relative intelligence; (2) the defendant's familiarity with criminal proceedings; (3) whether the defendant was represented by competent counsel and had the

opportunity to confer with counsel about alternatives; (4) the advice of counsel and the court about the charges against the defendant and the penalty to be imposed; and (5) the defendant's reasons for pleading guilty, including the desire to avoid a greater penalty in a jury trial. Id. at 904-05.

Trial counsel's testimony, which was accredited by the post-conviction court, established that she provided the petitioner with discovery, including a copy of the search warrant, met with him a number of times to discuss the case and possible defenses, and reviewed with him the plea agreement, including the sentences involved. The transcript of the guilty plea hearing reflects that the petitioner assured the trial court that he was satisfied with the representation of his counsel, understood the plea agreement and the rights he was waiving by pleading guilty, and that he had not been coerced or pressured into pleading guilty. The record also reveals that the petitioner had four prior felony convictions and was familiar with the criminal justice system and the procedure for pleading guilty. We conclude, therefore, that the evidence does not preponderate against the post-conviction court's findings that the petitioner knowingly, voluntarily, and intelligently entered his guilty pleas.

CONCLUSION

We conclude that the petitioner has not shown that he is entitled to post-conviction relief from his convictions. Accordingly, we affirm the denial of his petition for post-conviction relief.

ALAN E. GLENN, JUDGE