IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1996 SESSION

SAMUEL D. CURRY,	*	C.C.A. # 02C01-9508-CR-00219
Appellant,	*	SHELBY COUNTY
VS.	*	Hon. Bernie Weinman, Judge
STATE OF TENNESSEE,	*	(Post-Conviction)
Appellee.	*	

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(at evidentiary hearing)

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OPINION FILED:_____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The petitioner, Samuel D. Curry, appeals the trial court's denial of post-conviction relief. Two issues are presented for review:

> (1) whether the petitioner received the ineffective assistance of counsel; and
>
> (2) whether the petitioner entered his guilty pleas knowingly and voluntarily.

We find no error and affirm the judgment of the trial court.

The petitioner, indicted for aggravated robbery and first degree murder, entered pleas of guilt on January 10, 1994. Under the negotiated plea agreement, he received Range I, concurrent sentences of 12 years for the robbery and life for the murder. Some seven months later, the petitioner filed this petition for post-conviction relief, alleging that he was denied the effective assistance of counsel and that his plea was neither knowingly nor voluntarily made. Following an evidentiary hearing, the trial court found that the petition lacked merit, issuing detailed findings of fact and conclusions of law.

I

The petitioner claimed his trial counsel was ineffective for the following reasons:

> (1) counsel advised petitioner he would be released in 10 to 12 years, despite the fact that petitioner agreed to a life sentence, see Tenn. Code Ann. 40-35-501(g);
>
> (2) counsel did not adequately prepare petitioner's case in that he failed to explore potential witnesses, review petitioner's medical background, which includes a history of epilepsy and mild mental retardation, and generally to prepare for trial; and
>
> (3) counsel did not keep petitioner updated about the case in that he did not visit the petitioner more than twice; he did not tell petitioner about the plea offer until the date the petitioner actually pled guilty; and he did not advise the petitioner about the trial date.

Trial counsel testified that he did not know when the petitioner might first qualify for release. The plea agreement, signed by the petitioner, includes an acknowledgment of "confinement for life." At the submission hearing, the petitioner represented to the trial court that he understood that he would "serve a life sentence."

Trial counsel also testified that he had fully reviewed the case, including medical evaluations, which had concluded that the petitioner was competent to stand trial, even though he had a seizure disorder and mild mental retardation. Counsel also testified that his officer investigator had provided assistance in trial preparations. On more than one occasion, trial counsel met with the petitioner to explain the nature of his medical evaluations. Trial counsel also recalled that he had met with the petitioner to explain the plea offer about one month prior to the submission hearing.

In order for the petitioner to be granted relief on the grounds of ineffective assistance of counsel, he must establish that the advice given or the services rendered were not within the range of competence demanded of attorneys in criminal cases and that, but for his counsel's deficient performance, the result of his trial would have been different. Strickland v. Washington, 466 U.S. 668, 693 (1984); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). This two-part standard, as it applies to guilty pleas, is met when the petitioner establishes that, but for his counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 53 (1985).

The trial court found that the petitioner had, in fact, received the effective assistance of counsel. On appeal, the burden is on the petitioner to show that the evidence preponderates against the findings of the trial judge. Clenny v. State, 576 S.W.2d 12, 14 (Tenn. Crim. App. 1978). Otherwise, findings of fact made by the trial court are conclusive. Graves v. State, 512 S.W.2d 603, 604 (Tenn. Crim. App. 1973). Here, the trial court accredited the testimony of trial counsel and rejected the contentions of the petitioner. That limits our limited scope of review. As a result, this court must hold that the petitioner has failed to demonstrate that he would not have entered his pleas absent any deficiency in the performance of his counsel. Hill v. Lockhart, 474 U.S. at 53. The evidence simply does not preponderate against the findings of the trial court.

II

The petitioner also claims that his guilty pleas were neither knowing nor voluntary. He argues that his counsel's ineffectiveness rendered his plea involuntary and, further, that he was medicated and "not clear headed" at the time of the proceeding. While we have already determined that the effective assistance of counsel, we will, however, address the contention that the plea was involuntary due to his prescribed medication.

The overriding determination on the validity of a guilty plea rests upon whether it was knowingly and voluntarily entered. State v. Neal, 810 S.W.2d 131, 139-140 (Tenn. 1991). If the proof establishes that the petitioner was aware of his constitutional rights, he is entitled to no relief. Johnson v. State, 834 S.W.2d 922, 926 (Tenn. 1992). "[A] plea is not 'voluntary' if it is the product of '[i]gnorance, [or] incomprehension ...." Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993) (quoting Boykin v. Alabama, 395 U.S. 238, 242-43 (1969)).

The petitioner testified that he was not "clear headed" at the time of his plea. His mother, Geraldine Curry, also claimed that the investigator for the petitioner's trial counsel requested the nurse at the jail to administer an overdose of his regularly prescribed medication.

The transcript of the submission hearing contains the following colloquy:

> Q: Are you taking any drugs, sir?
>
> A: Yes, sir.
>
> Q: What?
>
> A: For seizures.
>
> Q: For seizures. All right. When did you last get any of that, sir?
>
> A: This morning.
>
> Q: This morning. Now have you been taking that continuously, sir? Or in other words, do you ordinarily take that?
>
> A: I take it every day.
>
> Q: Take it every day. Does it keep you from thinking clearly, sir?
>
> A: Yes, sir.
>
> Q: It keeps you from thinking clearly?
>
> A: Oh, no, sir.
>
> Q: All right. You're thinking all right, like you normally do, right?
>
> A: Yes, sir.
>
> Q: You understand what's going on.
>
> A: Yes, sir.
>
> Q: All right.

The trial judge questioned the petitioner extensively about the effect of the medication. The petitioner provided appropriate answers to each of the questions. At the conclusion of the proceeding, the trial judge concluded the petitioner fully understood his actions. Again, evidence in this record, including both the guilty plea and the evidentiary hearings, simply does not preponderate against that finding.

Accordingly, we affirm the judgment of the trial court.

_____
Gary R. Wade, Judge

CONCUR:

_____
Joe B. Jones, Presiding Judge

_____
Jerry L. Smith, Judge