

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
JULY SESSION, 1996

FILED

August 20, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

JAMES E. MARTIN,)
)
Appellant)
)
vs.)
)
STATE OF TENNESSEE,)
)
Appellee)

No. 03C01-9601-CR-00047

HAMILTON COUNTY

Hon. Russell C. Hinson, Judge

(Post-Conviction)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, James E. Martin, appeals from the Hamilton County Criminal Court's denial of his petition for post-conviction relief. In 1988, the appellant pled guilty to first degree murder and armed robbery. Pursuant to the plea agreement, the trial court imposed two concurrent life sentences. The appellant first contends that his pleas of guilty were not knowing and voluntary, i.e. "made with knowledge of the 'relevant circumstances and likely consequences.'" King v. Dutton, 17 F.3d 151, 153 (6th Cir.), cert. denied, __ U.S. ___, 114 S.Ct. 2712 (1994)(citation omitted). Second, the appellant asserts that appointed counsel were ineffective in failing to ensure that the appellant was capable of understanding the guilty plea proceeding.

After reviewing the record, we affirm the judgment of the post-conviction court.

BACKGROUND

The appellant and his fourteen year old cousin were indicted for the robbery and brutal murder of an elderly concession stand operator in Hamilton County. The accomplices killed the victim by placing a plastic bag over his head and then strangling him with a belt. Both the appellant and his cousin confessed their guilt to the police. The State gave notice of its intent to seek the death penalty.

On March 23, 1988, upon the motion of defense counsel, the trial court ordered an evaluation of the appellant's competency to stand trial and his mental condition at the time of the alleged offenses. On April 18, 1988, the Johnson Mental Health Center advised defense counsel and the State that the appellant was competent to stand trial and that a defense of insanity could not be

supported. On the same day, the appellant pled guilty to the charged offenses.

On April 2, 1991, the appellant filed a petition for post-conviction relief.

On May 23, 1994, the post-conviction court conducted an evidentiary hearing for the purpose of addressing the appellant's claims. At the hearing, the appellant testified that, at the time of his guilty pleas, he was receiving treatment at Fortwood Mental Health Center, including medication. He further testified that the "medication ... affected [his] thought process" during the guilty plea proceeding. Moreover, according to the appellant, he attempted to commit suicide during his pre-trial detention in the Hamilton County Jail.¹ The appellant

¹Medical records from Erlanger Medical Center, introduced at the hearing, indicate that, on February 22, 1988, the appellant was transported to the Center because he claimed to have ingested twenty-four tablets of thorazine. At the Center, he denied attempting suicide. An entry in the records dated the following day reflect that the appellant was "alert and oriented."

Immediately following his release from Erlanger Hospital, the appellant informed medical personnel at Fortwood Mental Health Center and Moccasin Bend Mental Health Center that the overdose had been intentional and that he continued to suffer suicidal tendencies. Subsequent medical records from Fortwood and Moccasin Bend contain the following entries:

2/26/88: [Patient is] alert and oriented There's no organic confusion. There's no deficit of memory or of intellect. No psychotic distortions, perceptions, affect, behavior, or ideations seen.

3/3/88: Mood slightly dysphoric. No thought disorder.
Discharge Medication: Ludiomil 25 mg hs.

3/8/88: Mr. Martin presents today alert and oriented in all spheres. . . . Denies any suicidal intent since hospitalization. Mr. Martin was quite calm and cooperative and communicated well. No evidence of psychotic st.

3/9/88: Pt is oriented in all spheres ... no evidence of hallucinations or thought disorder at this time. Denies any current psychotic st. ... Calm and cooperative. Communicates well ... clear, coherent, relevant speech.

3/28/88: [Patient complains of] irritability, tension, easily gets into fights, not sleeping at night. RX: Ludiomil
Vistaril

4/29/88: Went to court on 4/18 and was sentenced. Disappointed in a way, but not surprised. Relieved that he did not get death penalty ... was a possibility. As before, calm, in control Already inquiring about opportunities for education and training in prison. ... Extremely positive attitude. Speech clear and relevant. No

argues that as a result of his “drugged state” and his emotional condition, he was unable to comprehend his constitutional rights or the consequences of his guilty pleas. The appellant testified that he recalls little, if anything, that transpired at his guilty plea hearing.

The appellant’s trial counsel testified at the hearing that he had filed the standard pre-trial motions, including a motion to suppress the appellant’s statements to the police, had interviewed the appellant and members of the appellant’s family, and had made efforts to obtain prior records relating to the appellant’s mental status.² Indeed, trial counsel sought and obtained an order for a mental evaluation to determine the competency of the appellant to stand trial and whether a defense of insanity could be supported. Trial counsel testified that he discussed the findings of the Johnson Mental Health Center with the appellant and his mother. Moreover, trial counsel testified that he discussed all available options with his client. Counsel stated,

I was particularly careful to make sure not only [the appellant] but any family members that were present understood what the options were, that I was not suggesting that we do any particular course and make sure they understood what was the end result in this case, the plea. ...

I would not leave out of there without making sure he understood the ramifications of receiving a death penalty sentence. I’m sure I would have told him what the evidence was as I understood it that the State had available, what defenses, if any, we had and let him know basically while the decision was his, it was strictly his decision, but where I thought the evidence would pile up in the process of a trial. ...

I always tried to advise [the appellant’s mother] as to what was going on in the case and making sure that not only [the appellant] but his mother and other family members understood exactly what was going on because ... the issue about competency had been raised, I wanted to make sure that other family members who that issue did not surround were there to share with me any information that I needed as well as make sure that [the appellant] was understanding what the options were.

evidence of depression or psychotic symptoms.

²Although two attorneys were appointed, one of the attorney’s representation was limited to research of death penalty cases.

Counsel was unable to recall whether the appellant was receiving medication at the time of the guilty plea hearing.

A transcript of the appellant's guilty plea hearing of April 18, 1988, was introduced at the post-conviction hearing. The transcript of that hearing reflects that the appellant was afforded the full litany of rights as required by Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969), State v. Mackey, 553 S.W.2d 337 (Tenn. 1977), State v. McClintock, 732 S.W.2d 268, 273 (Tenn. 1987), and Tenn. R. Crim. P. 11(c). The transcript of the guilty plea hearing also indicates that the appellant advised the court that he was not "under the influence of any medication or drugs or anything of that sort or emotional distress" that would interfere with his ability to knowingly and voluntarily plead guilty. The appellant admitted his participation in the robbery and murder of the victim. The appellant agreed that his appointed lawyers had done everything that he had reasonably expected them to do and that they had answered all of his questions.

The post-conviction court dismissed the appellant's petition, concluding that the appellant was competent and knowingly and voluntarily pled guilty. More specifically, the post-conviction court found, "The entire tenor of the guilty plea hearing is that of an alert and understanding defendant. . . . The opinion in evidence of [Johnson Mental Health Center] that the defendant was competent to stand trial has not been seriously challenged."

ANALYSIS

In post-conviction proceedings, the appellant has the burden of proving the allegations in his petition by a preponderance of the evidence. Wade v. State, 914 S.W.2d 97, 101 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1995); McBee v. State, 655 S.W.2d 191, 195 (Tenn. Crim. App. 1983). The

findings of the trial court are conclusive on appeal unless the evidence preponderates against the judgment. Wade, 914 S.W.2d at 101; Black v. State, 794 S.W.2d 752, 755 (Tenn. 1990); Clenny v. State, 576 S.W.2d 12, 14 (Tenn. Crim. App. 1978).

The appellant contends that his pleas were not knowingly and voluntarily entered. As previously indicated, the appellant asserts that, on the day of the guilty plea hearing, he was under the influence of drugs. According to the appellant, the medication and his mental state precluded comprehension of the consequences of pleading guilty. Initially, we note that the appellant has merged the issue of whether the appellant was competent to plead guilty and the issue of whether the appellant's pleas were knowing and voluntary. These issues are not the same. See, e.g., Godinez v. Moran, 509 U.S. 389, ___, 113 S.Ct. 2680, 2687 (1993). In Godinez, the United States Supreme Court explained:

The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the ability to understand the proceedings. The purpose of the "knowing and voluntary" inquiry, by contrast, is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced.

Id. at 2687-2688 n. 12 (citations omitted).

With respect to competency, the Supreme Court in Godinez held that the competency standard for pleading guilty is the same as the competency standard for standing trial, i.e., the capacity to understand the nature and object of the proceedings, consult with counsel, and assist in the preparation of his or her defense. Id. at 2686; Berndt v. State, 733 S.W.2d 119, 123 (Tenn. Crim. App. 1987). See also State v. Benton, 759 S.W.2d 427, 429 (Tenn. Crim. App. 1988); State v. Mackey, 537 S.W.2d 704, 707 (Tenn. Crim. App. 1975), perm. to appeal denied, (Tenn. 1976). The appellant, in the instant case, was found competent to stand trial on the same day that he entered pleas of guilty. Moreover, neither the medical records submitted by the appellant to the post-

conviction court nor the transcript of the guilty plea proceeding contradicts this evaluation.

With respect to the knowing and voluntary nature of the appellant's pleas, the appellant does not challenge the adequacy of the trial court's advice of counsel. In other words, the appellant does not assert any error by the trial court that would shift the burden of proof to the State to prove harmless error beyond a reasonable doubt. State v. Neal, 810 S.W.2d 131, 135-137 (Tenn. 1991). See also Adkins v. State, 911 S.W.2d 334, 348 (Tenn. Crim. App. 1994), perm. to appeal denied, (Tenn. 1995).³ In any event, the entire record shows beyond a reasonable doubt that the pleas were knowing and voluntary. Id. In making this determination, we may consider any relevant evidence in the record of the proceedings, including post-conviction proceedings. State v. Turner, No. 01C01-9404-CR-00122 (Tenn. Crim. App. at Nashville, September 20, 1995), perm. to appeal denied, (Tenn. 1996)(citing Cochran v. Norvell, 446 F.2d 61, 63 (6th Cir. 1971)).

[A] court charged with determining whether ... pleas were 'voluntary' and 'intelligent' must look to various circumstantial factors, such as the relative intelligence of the defendant, the degree of his familiarity with criminal proceedings, whether he was represented by competent counsel and had the opportunity to confer with counsel about the options available to him; the extent of advice from counsel and the court concerning the charges against him; and the reasons for his decision to plead guilty, including a desire to avoid a greater penalty that might result from a jury trial.

State v. Blankenship, 858 S.W.2d 897, 904 (Tenn. 1993).

Again, the transcript of the guilty plea hearing affirmatively establishes the validity of the appellant's pleas or, at least, strongly suggests that the appellant's pleas were knowing and voluntary. At the guilty plea hearing, the appellant's

³But see Johnson v. State, 834 S.W.2d 922, 926 (Tenn. 1992)(the supreme court only required the State to prove by clear and convincing evidence that the pleas were, in fact, knowing and voluntary).

answers to the court's questions were coherent and responsive. Moreover, as noted earlier, the appellant informed the trial court at the hearing that he was not under the influence of any medication or drugs that would interfere with his ability to enter a knowing and voluntary plea. Again, the transcript of the hearing reflects that the appellant discussed the plea arrangement with his lawyers on numerous occasions. He had also discussed his decision with his mother, who accompanied the appellant at the hearing. Moreover, the appellant's medical records consistently characterize the appellant as "alert and oriented in all spheres." Indeed, the records reflect that, following the guilty plea hearing, the appellant discussed the disposition of his case with medical personnel, expressing relief that he had escaped the death penalty. In summary, the bare assertions of the appellant at the post-conviction hearing that he did not knowingly and voluntarily plead guilty are not sufficient to carry his burden of proof. Brown v. State, No. 03C01-9107-CR-00233 (Tenn. Crim. App. at Knoxville), perm. to appeal denied, (Tenn. 1992)(citing McBee, 655 S.W.2d at 195).

Implicit in our determination that the appellant's pleas were knowing and voluntary is the determination that trial counsel provided competent representation. The appellant contends that trial counsel failed to "make themselves aware of his mental and/or emotional condition and/or his drugged state so as to be able to fully advise him of his various constitutional rights prior to his guilty plea." In order to establish a claim of ineffective assistance of counsel an appellant must show (a) that the services rendered by counsel were not within the range of competence demanded of attorneys in criminal cases and (b) that the deficient representation was prejudicial. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). See also Wilson v. State, 899 S.W.2d 648, 652-653 (Tenn. Crim. App. 1994), perm. to appeal denied, (Tenn. 1995). When the

petitioner seeks to set aside guilty pleas on the basis of ineffective assistance of counsel, he must demonstrate a reasonable probability that, but for counsel's deficiency, he would have insisted upon proceeding to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985); Wilson, 899 S.W.2d at 653; Bankston v. State, 815 S.W.2d 213, 215 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1991).

Again, there is virtually no evidence in the record that the appellant's mental state or his medication interfered with his ability to knowingly and voluntarily plead guilty. Again, trial counsel at the post-conviction hearing indicated that, at the time of the guilty plea hearing, he had pursued information concerning the appellant's psychological history and obtained a mental evaluation of the appellant. He had reviewed the results of the evaluation, performed by the Johnson Mental Health Center. He had fully advised the appellant of his options, which included pleading guilty to the charged offenses, and, indeed, had enlisted the aid of members of the appellant's family in ensuring the appellant's understanding. We cannot conclude, based upon the record before this court, that counsel's representation was deficient.

Accordingly, the decision of the post-conviction court, denying the appellant's petition for post-conviction relief, is affirmed.

David G. Hayes, Judge

CONCUR:

Joe B. Jones, Presiding Judge

William M. Dender, Special Judge