

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs May 2, 2023

**FILED**  
06/05/2023  
Clerk of the  
Appellate Courts

**FLOYD HALL, III v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Haywood County  
No. 7206 Clayburn Peoples, Judge**

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**No. W2022-00642-CCA-R3-PC**

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The Petitioner, Floyd Hall, III, appeals the Haywood County Circuit Court’s denial of his petition for post-conviction relief from his conviction for second degree murder. On appeal, the Petitioner argues that the post-conviction court erred by denying his claim that he received the ineffective assistance of counsel by trial counsel’s failure to file a motion to suppress a statement the Petitioner gave to the police. We affirm the post-conviction court’s judgment.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which TIMOTHY L. EASTER and JOHN W. CAMPBELL, SR., JJ., joined.

William J. Milam, Jackson, Tennessee, for the appellant, Floyd Hall, III.

Jonathan Skrmetti, Attorney General and Reporter; Katharine K. Decker, Senior Assistant Attorney General; Frederick Hardy Agee, District Attorney General; and Jerald Campbell, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. FACTUAL AND PROCEDURAL HISTORY**

On December 11, 2017, the Petitioner pleaded guilty to second degree murder and received a forty-five-year sentence at 100 percent service. The Petitioner did not directly appeal this conviction but filed a timely petition for post-conviction relief. Appointed counsel filed an amended petition alleging that trial counsel was ineffective in several ways, including trial counsel’s failure to file a motion to suppress a statement the Petitioner gave to the police.

At the January 28, 2022 post-conviction hearing, trial counsel testified that he had practiced law since April 1993 and had been involved in over 200 jury trials. Regarding the Petitioner's case, trial counsel said that the Petitioner gave a confession to the police and that no pretrial motions were filed. Trial counsel obtained discovery and visited the Petitioner in jail several times to review the discovery with the Petitioner. Trial counsel explained that during the Petitioner's initial interaction with Sheriff Melvin Bond and Tennessee Bureau of Investigation (TBI) Agent Brent Booth, the Petitioner was advised of his *Miranda*<sup>1</sup> rights and invoked his right to counsel. Trial counsel said that later that day, the Petitioner asked to speak to Sheriff Bond. Sheriff Bond, who wore recording equipment when he spoke with the Petitioner, again advised the Petitioner of his *Miranda* rights, and the Petitioner made a confession. Trial counsel explained that because the Petitioner was advised of his *Miranda* rights, trial counsel did not think there was a basis to file a motion to suppress the confession.

Trial counsel testified that if he "had to do it again," he would file a motion to suppress the Petitioner's statement but that he still thought the suppression motion had no merit. Trial counsel explained that he thought a suppression motion was meritless because he researched the issue and believed the police handled the Petitioner's case properly. Trial counsel said that he did not "like" that police "induced" the Petitioner into confessing but that he still chose not to file a motion to suppress the confession.

The Petitioner testified that he pleaded guilty to second degree murder and that he was serving a forty-five-year sentence at 100 percent service. The Petitioner said that when he first began talking with the police, he was advised of his *Miranda* rights, and he informed the police that he wanted to speak with an attorney before any questioning. The Petitioner said that the questioning stopped when he asked for an attorney and that the officers left the interview room. The Petitioner said that he later asked to speak to Sheriff Bond. The Petitioner said that he talked to Sheriff Bond about his childhood, his drug addiction, and how he wanted help with his drug addiction. The Petitioner said that Sheriff Bond began talking with him about the case and that Sheriff Bond said he was going to "help" the Petitioner. The Petitioner said that it was "hours" after discussing the case before Sheriff Bond informed him of his *Miranda* rights for a second time. The Petitioner said that he signed the *Miranda* rights form a second time and continued talking to Sheriff Bond about the case. The Petitioner said that he told trial counsel that the officers induced him to give a confession but that trial counsel told him it "didn't matter." The Petitioner said he thought the officer "tricked" him into talking about the case. The Petitioner said that if trial counsel had "really focused" on his case, then "the outcome would have been different."

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

In its oral and written findings, the post-conviction court noted that no one entered the Petitioner's "confession" as an exhibit to the post-conviction hearing. The post-conviction court found that trial counsel was an experienced attorney who had participated in many trials. The post-conviction court noted trial counsel's testimony that trial counsel evaluated the situation and determined that a motion to suppress would be meritless. The post-conviction court found that a motion to suppress was without merit and accredited trial counsel's testimony that the officers handled the Petitioner's case properly. The post-conviction court found that trial counsel's investigation and handling of the Petitioner's case was "completely adequate" and "met the standard of criminal defense attorneys[.]" The post-conviction court stated that it did not "find any fault in [trial counsel's] representation at all" and denied the Petitioner's post-conviction petition.

On May 18, 2022, the Petitioner filed a motion seeking permission to late-file a notice of appeal from the post-conviction court's February 1, 2022 order denying his petition for post-conviction relief. This court granted the motion, and on June 13, 2022, the Petitioner filed his notice of appeal.

## II. ANALYSIS

On appeal, the Petitioner argues that the post-conviction court erred by denying his claim that he received the ineffective assistance of counsel by trial counsel's failure to file a motion to suppress the Petitioner's statement to the police. The State responds that the post-conviction court did not err by denying the Petitioner's claim of ineffective assistance of counsel because the Petitioner failed to establish that a motion to suppress would have been granted.

Post-conviction relief is available when a "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. The burden in a post-conviction proceeding is on the petitioner to prove allegations of fact by clear and convincing evidence. *Id.* § 40-30-110(f); *see Dellinger v. State*, 279 S.W.3d 282, 293-94 (Tenn. 2009). "Questions concerning the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved" by the post-conviction court. *Fields v. State*, 40 S.W.3d 450, 456 (Tenn. 2001). On appeal, we are bound by the post-conviction court's findings of fact unless we conclude that the evidence in the record preponderates against those findings. *Id.* Because they relate to mixed questions of law and fact, we review the post-conviction court's conclusions as to whether counsel's performance was deficient and whether that deficiency was prejudicial under a de novo standard with no presumption of correctness. *Id.* at 457.

Criminal defendants are constitutionally guaranteed the right to effective assistance of counsel. U.S. Const. amend. VI; Tenn. Const. art. I, § 9; see *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980); *Dellinger*, 279 S.W.3d at 293. When a claim of ineffective assistance of counsel is made under the Sixth Amendment to the United States Constitution, the burden is on the petitioner to show (1) that counsel’s performance was deficient and (2) that the deficiency was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); see *Lockhart v. Fretwell*, 506 U.S. 364, 368-72 (1993). “Because a petitioner must establish both prongs of the test, a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim.” *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996). The *Strickland* standard has been applied to the right to counsel under article I, section 9 of the Tennessee Constitution. *State v. Melson*, 772 S.W.2d 417, 419 n.2 (Tenn. 1989).

Deficient performance requires a showing that “counsel’s representation fell below an objective standard of reasonableness,” despite the fact that reviewing courts “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Strickland*, 466 U.S. at 688-89. When a court reviews a lawyer’s performance, it “must make every effort to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s conduct, and to evaluate the conduct from the perspective of counsel at that time.” *Howell v. State*, 185 S.W.3d 319, 326 (Tenn. 2006) (citing *Strickland*, 466 U.S. at 689). We will not deem counsel to have been ineffective merely because a different strategy or procedure might have produced a more favorable result. *Rhoden v. State*, 816 S.W.2d 56, 60 (Tenn. Crim. App. 1991). We recognize, however, that “deference to tactical choices only applies if the choices are informed ones based upon adequate preparation.” *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992) (citing *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982)).

As to the prejudice prong, in the context of a guilty plea, the effective assistance of counsel is relevant only to the extent that it affects the voluntariness of the plea. See *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). Therefore, to satisfy the second prong of *Strickland*, the petitioner must show that “there is reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59; see also *Walton v. State*, 966 S.W.2d 54, 55 (Tenn. Crim. App. 1997).

Our supreme court has held that to establish a successful claim of ineffective assistance of counsel based on counsel’s failure to file a motion to suppress evidence, a petitioner “must prove: (1) a suppression motion would have been meritorious; (2) counsel’s failure to file such motion was objectively unreasonable; and (3) but for counsel’s

objectively unreasonable omission, there is a reasonable probability that the verdict would have been different absent the excludable evidence.” *Phillips v. State*, 647 S.W.3d 389, 404 (Tenn. 2022) (internal quotations and citations omitted). The burden to prove the factual allegations supporting the petitioner’s claims by clear and convincing evidence remains with the petitioner. *Id.* (citing Tenn. Code Ann. § 40-30-110(f)). Thus, in order to prevail, a petitioner “should incorporate a motion to suppress within the proof presented at the post-conviction hearing.” *Id.* at 403 (quoting *Terrance Cecil v. State*, No. M2009-00671-CCA-R3-PC, 2011 WL 4012436, at \*8 (Tenn. Crim. App. Sept. 12, 2011)).

First, we note that the Petitioner, who bore the burden of proof, failed to introduce a recording or transcript of his statement to the police at the post-conviction hearing. *See* Tenn. Code Ann. § 40-30-110(f). The Petitioner also failed to call Sheriff Bond to testify at the post-conviction hearing. Further, the Petitioner failed to incorporate a motion to suppress within the proof at the post-conviction hearing as required by *Phillips* and *Cecil*. This prevents him from showing that a suppression motion would have been meritorious. *See Phillips*, 647 S.W.3d at 403-04.

Thus, we are left only with the post-conviction court’s factual findings from the testimony of trial counsel and the Petitioner, and the legal conclusions drawn therefrom, to determine whether the post-conviction correctly determined that trial counsel was not deficient in declining to file a suppression motion after determining that a motion to suppress was without merit. Nothing in the record preponderates against the post-conviction court’s factual findings on this point, which demonstrate that trial counsel’s decision to not file a suppression motion amounted to a tactical choice based upon adequate preparation, *see Cooper*, 847 S.W.2d at 528, and not an “objectively unreasonable omission[,]” *see Phillips*, 647 S.W.3d at 404. The post-conviction court correctly found that the Petitioner failed to show that trial counsel’s performance was deficient.

The record also shows that the Petitioner failed to demonstrate that he was prejudiced by trial counsel’s representation. While the Petitioner testified generally that “the outcome would have been different” had a suppression motion been filed, he failed to establish a reasonable probability that, had the motion been filed and granted, “he would not have pleaded guilty and would have insisted on going to trial.” *See Hill*, 474 U.S. at 56. We further note that this failure is compounded by the Petitioner’s failure to include the stipulated facts from his plea colloquy in the record on appeal, which prevents this court from knowing the strength of the State’s case absent the excludable evidence. Accordingly, the Petitioner is not entitled to relief regarding this issue.

### III. CONCLUSION

Based upon the foregoing and the record as a whole, we affirm the judgment of the post-conviction court.

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KYLE A. HIXSON, JUDGE