

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
February 22, 2023 Session

FILED

05/03/2023

Clerk of the  
Appellate Courts

**HARRY CLINT WEAVER, JR. v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Sullivan County  
No. C73528 William K. Rogers, Judge**

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**No. E2022-00228-CCA-R3-PC**

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The petitioner, Harry Clint Weaver, Jr., appeals the denial of his petition for post-conviction relief, which petition challenged his 2019 Sullivan County Criminal Court guilty-pleaded convictions of first degree premeditated murder, felony murder, three counts of aggravated assault, reckless endangerment, and aggravated domestic assault, for which he received an effective sentence of life imprisonment. On appeal, the petitioner argues that the post-conviction court erred in allowing trial counsel to remain in the courtroom while the petitioner testified during the evidentiary hearing and that he was deprived of the effective assistance of counsel. Discerning no error, we affirm.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed**

JAMES CURWOOD WITT, JR., P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and JOHN W. CAMPBELL, SR., JJ., joined.

Ilya I. Berenshteyn, Bristol, Tennessee, for the appellant, Harry Clint Weaver, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Barry P. Staubus, District Attorney General; and Kaylin Render, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The petitioner faced a charge of first degree murder for shooting and killing his wife, Kelly Weaver, on February 13, 2019, and other associated charges that stemmed from the incident. On that date, the petitioner entered Dr. David Guy's dental office where the victim worked. The petitioner shot the victim multiple times and variously pointed his gun at Dr. Guy, Sabrina Steele (another employee), and Larry Seagroves (a patient). Mr.

Seagroves drew his personal weapon and shot the petitioner multiple times. Ms. Weaver died of her wounds, and the petitioner underwent extensive medical treatment but ultimately survived his gunshot wounds.

In total, the July 19, 2019 presentment charging the petitioner with first degree murder contained nine counts. At the October 19, 2019 guilty-plea submission hearing, the trial court reviewed the terms of the nine counts of the presentment and the provisions of the plea agreement, which included terms of merger, nolle, and concurrent sentencing, yielding an effective sentence of life in prison for premeditated first degree murder and other felonies. The trial court expressed a litany of the various rights that the petitioner would be waiving upon the submitted pleas. The petitioner, who was in his sixties, acknowledged that he was pleading guilty and waiving his rights freely and voluntarily. When asked whether he was satisfied with the service of his court-appointed counsel, the petitioner replied, "I think they have done their best." The trial court accepted the plea and sentenced the petitioner. The judgments of conviction were entered on October 29, 2019.

On September 15, 2020, the petitioner filed a petition for post-conviction relief. The post-conviction court appointed counsel, and the petitioner amended his petition. The amended petition alleged that the guilty plea was uninformed and involuntary and that his trial counsel had rendered ineffective assistance. Specifically, the petition alleged that trial counsel failed to properly consider the petitioner's age in the plea-bargaining process; that trial counsel had a conflict due to his relationship with the petitioner's son-in-law; that trial counsel coerced the guilty plea by stressing that the petitioner should not put his family through the travails of a trial; and that trial counsel failed to explain the levels of culpability for homicide, failed to seek a mental evaluation, and failed to consider mitigation evidence. The post-conviction court held an evidentiary hearing on December 7, 2021. At the commencement of the hearing, the post-conviction court, over the objection of the petitioner, ruled that trial counsel would be allowed to remain in the courtroom during the presentation of the petitioner's case.

During the hearing, the petitioner testified that at the time of the shooting, a divorce was pending between himself and the victim. He was critically injured by the gunshot wounds that he received after his shooting the victim, and while in jail following his hospitalization, he was confined to a wheelchair until approximately May 2019. When trial counsel informed him that he would be convicted of offenses stemming from the shooting, the petitioner became "frustrated" and "distraught." He stated that he experienced "enormous pressure...devastating pressure" when trial counsel told him that the petitioner's son-in-law had said that the family wanted the petitioner to plead to a life sentence. The petitioner said that trial counsel failed to discuss the lesser degrees of

homicide with him, but the petitioner acknowledged that he was evaluated by a mental health professional.

Eventually, the petitioner discussed a possible guilty plea with trial counsel. The petitioner posed two objections to pleading guilty. First, he referenced a collection of 12 to 15 guns that the police had taken from his home, and he wanted the guns returned to his son. Second, he did not want to plead to the kidnapping charges. When informed that the State had returned the guns to his son and had agreed to dismiss the kidnapping charges, the petitioner agreed to plead guilty to first degree murder and a sentence of life in prison. The petitioner acknowledged that he signed the written plea agreement and initialed the areas explaining his rights but maintained that he did so “to end my frustration.”

During the evidentiary hearing, trial counsel testified that he and co-counsel were members of the public defender’s office who were appointed to represent the petitioner on the charges. Trial counsel learned that one of his friends was the employee of the petitioner’s son-in-law. Trial counsel spoke to the petitioner’s son-in-law at a wedding and later at a cookout, and the petitioner’s son-in-law informed him that the family did not want the State to seek the death penalty. Trial counsel informed the petitioner of the connection with his son-in-law, and the petitioner declined to ask trial counsel to withdraw. Trial counsel said the situation posed no ethical issue.

Trial counsel testified that he and the petitioner discussed the number of years that the petitioner would be required to serve if convicted and his age when he would be eligible for parole. Trial counsel told the petitioner that he would not live long enough to be released from prison, but the petitioner still wanted a sentence that included parole eligibility. Trial counsel stated that he informed the petitioner that there was no issue in the case regarding identity since the petitioner shot his wife in front of multiple witnesses. Trial counsel said that he and the petitioner discussed the different levels of culpability related to homicides, including “heat of passion.” Trial counsel informed the petitioner that he did not believe any argument that the petitioner killed his wife in the “heat of passion” would be successful because the petitioner gave a statement to the police in which he admitted that he planned the shooting.

Trial counsel testified that the petitioner was interested in a defense that sullied the victim. Trial counsel advised against such a tactic because it would not be effective and would only serve to cause the family distress upon hearing evidence of the victim’s bad character. Trial counsel denied telling the petitioner that he should avoid putting his family through a trial in general, only that the petitioner’s family should not necessarily have to hear the petitioner’s blaming the victim.

Trial counsel hired Dr. Eric Engum to examine the petitioner and to determine whether a defense of mental incapacity could be supported. Dr. Engum met with the petitioner for three days and informed trial counsel that no such defense could be supported. Dr. Engum described the petitioner as an extreme narcissist. When informed that the defense could not use Dr. Engum, the petitioner insisted on finding a doctor who would help him at trial. Trial counsel declined to seek another expert because, in part, he did not believe a defense of mental incapacity existed, and he stated that a search for another expert would have been a waste of time.

Trial counsel testified that the petitioner declined to enter into a plea agreement unless the guns belonging to his son that the police officers had seized from the petitioner's home were returned to his son and the kidnapping charge and the charges involving Ms. Steele were dismissed. The State returned the guns to the petitioner's son and agreed to dismiss the kidnapping charge and a charge involving Ms. Steele. Trial counsel said that when reviewing the plea agreement, the petitioner exhibited no hesitation or frustration; however, trial counsel had to disabuse the petitioner of the notion that, once in prison, the petitioner would be able to persuade the warden to shorten his sentence. The petitioner signed and initialed the plea agreement, indicating that he understood the terms of the agreement.

At the conclusion of the hearing, the post-conviction court took the matter under advisement, and on February 2, 2022, the court entered an order denying post-conviction relief. The court credited trial counsel's testimony concerning his preparations for trial and the report submitted to him by Dr. Engum, and the court found that trial counsel informed the petitioner that a "heat of passion" defense would be inapt because the petitioner had told the police that he "had planned the whole thing out." The court characterized trial counsel and co-counsel as very competent and found that trial counsel was "extremely credible as opposed to the petitioner." The court also found that trial counsel "very competently discussed [the plea] with the petitioner and that [the petitioner] fully understood its consequences, and made his plea voluntarily."

The petitioner filed a timely notice of appeal on February 24, 2022. In this appeal, the petitioner argues that the post-conviction court erred in allowing trial counsel to be present at the hearing during the presentation of the petitioner's case, citing Tennessee Rule of Evidence 615. He also challenges the post-conviction court's determination that the petitioner failed to establish facts to support a claim of ineffective assistance of trial counsel. He claims that trial counsel failed to ensure that the petitioner understood the plea agreement, given the petitioner's age and his debilities resulting from his gunshot injuries. He further claims that trial counsel failed to "properly explain the case, possible defenses, and elements of the crime."

Post-conviction relief is available only “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.” T.C.A. § 40-30-103. A post-conviction petitioner bears the burden of proving his or her factual allegations by clear and convincing evidence. *Id.* § 40-30-110(f). On appeal, the appellate court accords to the post-conviction court’s findings of fact the weight of a jury verdict, and these findings are conclusive on appeal unless the evidence preponderates against them. *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997); *Bates v. State*, 973 S.W.2d 615, 631 (Tenn. Crim. App. 1997). By contrast, the post-conviction court’s conclusions of law receive no deference or presumption of correctness on appeal. *Fields v. State*, 40 S.W.3d 450, 453 (Tenn. 2001).

Before a petitioner will be granted post-conviction relief based upon a claim of ineffective assistance of counsel, the record must affirmatively establish, via facts clearly and convincingly established by the petitioner, that “the advice given, or the services rendered by the attorney, are [not] within the range of competence demanded of attorneys in criminal cases,” *see Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and that counsel’s deficient performance “actually had an adverse effect on the defense,” *Strickland v. Washington*, 466 U.S. 668, 693 (1984). In other words, the petitioner “must show that there is 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 694. Should the petitioner fail to establish either deficient performance or prejudice, he is not entitled to relief. *Id.* at 697; *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996). Indeed, “[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed.” *Strickland*, 466 U.S. at 697.

In the context of a guilty plea, the petitioner must establish that “counsel’s constitutionally ineffective performance affected the outcome of the plea process” by establishing “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *see Hicks v. State*, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998).

Apart from whether a guilty plea is the product of ineffective assistance of counsel, it is invalid if otherwise made unknowingly or involuntarily. “Whether a plea was knowing and voluntary is an issue of constitutional dimension because “[t]he due process provision of the federal constitution requires that pleas of guilty be knowing and voluntary.” *State v. Wilson*, 31 S.W.3d 189, 194 (Tenn. 2000) (alteration in original) (quoting *Johnson v. State*, 834 S.W.2d 922, 923 (Tenn. 1992)). A plea “may not be the product of “[i]gnorance, incomprehension, coercion, terror, inducements, [or] subtle or blatant threats.” *Wilson*, 31 S.W.3d at 195 (alterations in original) (quoting *Boykin v.*

*Alabama*, 395 U.S. 238, 242-43 (1969)); *see also State v. Mellon*, 118 S.W.3d 340, 345 (Tenn. 2003) (citing *Blankenship v. State*, 858 S.W.2d 897, 904 (Tenn. 1993)).

The petitioner asserts that the post-conviction court erred in permitting trial counsel to remain in the courtroom during the presentation of the petitioner's proof during the evidentiary hearing. Tennessee Rule of Evidence 615 provides that "[a]t the request of a party the court shall order witnesses, including rebuttal witnesses, excluded at trial or other adjudicatory hearing." Rule 615 does not authorize the exclusion of "a person whose presence is shown by a party to be essential to the presentation of the party's cause." "The party seeking to avoid sequestration bears the burden of proving that a Rule 615 exemption applies." *Palmer v. State*, 108 S.W.3d 887, 898 (Tenn. Crim. App. 2002) (quotation omitted). The application of Rule 615 is within the trial court's sound discretion. *Id.*

This court previously has recognized that "[g]iven the special circumstances which arise in a post-conviction proceeding in which a petitioner claims that his trial attorney was ineffective, it is entirely reasonable to conclude that the trial attorney's presence would be essential for the presentation of the state's case." *Id.* (quotation omitted). In numerous cases, this court has concluded that a post-conviction court did not abuse its discretion in allowing trial counsel to remain in the courtroom during the presentation of the petitioner's proof. *See, e.g. David Lynn Smith v. State*, No. W2012-02578-CCA-R3-PC, 2014 WL 1571944, at \*10 (Tenn. Crim. App., Jackson, Apr. 17, 2014); *Dameion Nolan v. State*, No. E2012-00429-CCA-R3-PC, 2013 WL 3353333, at \*8 (Tenn. Crim. App., Knoxville, June 28, 2013); *Savon Page v. State*, No. E2012-00421-CCA-R3-PC, 2013 WL 68904, at \*10 (Tenn. Crim. App., Knoxville, Jan. 7, 2013). Likewise, we discern no abuse of discretion in the instant case. Furthermore, the petitioner has failed to articulate what prejudice resulted by the post-conviction court's decision to allow trial counsel to remain in the courtroom. *See Palmer*, 108 S.W.3d at 898. We conclude that the petitioner is not entitled to relief on this issue.

We also conclude that the petitioner failed to establish that trial counsel was ineffective. Trial counsel testified that he discussed with the petitioner the practicable effect of a sentence of imprisonment due to the petitioner's age, the different levels of culpability related to homicides, and any possible defenses. Trial counsel concluded that "heat of passion" was not a viable defense due to the petitioner's admission to the police that the shooting was planned. The petitioner was evaluated by a mental health expert, who determined that a defense of mental incapacity could not be supported. Trial counsel testified that he reviewed the terms of the plea agreement with the petitioner, that the petitioner exhibited no hesitation or frustration, and that the petitioner signed and initialed the plea agreement, indicating that he understood the terms of the agreement. Trial counsel testified that he did not tell the petitioner that he should avoid putting his family through a trial. During the plea hearing, the petitioner affirmed that he understood the terms of the

plea agreement and that he was waiving his rights freely and voluntarily. The post-conviction court credited trial counsel's testimony and found that trial counsel "very competently discussed [the plea] with the petitioner and that [the petitioner] fully understood its consequences, and made his plea voluntarily." The evidence does not preponderate against the post-conviction court's findings. We conclude that trial counsel's performance was not deficient and that the petitioner knowingly and voluntarily entered the plea agreement. Accordingly, the petitioner is not entitled to relief.

For the foregoing reasons, we affirm the judgment of the post-conviction court.

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JAMES CURWOOD WITT, JR., PRESIDING JUDGE