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Appellate Courts

THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs November 3, 2022

JOE G. MANLEY v. STATE OF TENNESSEE

Appeal from the Circuit Court for Fayette County
No. 20-CR-157 J. Weber McCraw, Judge

No. W2022-00966-CCA-R3-PC

The Petitioner, Joe G. Manley, appeals from the Fayette County Circuit Court's denial of his petition for post-conviction relief challenging his guilty-pleaded convictions for aggravated domestic assault, domestic assault, and false imprisonment. The Petitioner contends that the post-conviction court erred by finding that he received effective assistance of counsel and that his guilty pleas were knowingly and voluntarily entered. Specifically, the Petitioner asserts that trial counsel was ineffective based upon trial counsel's failing to (1) communicate and maintain contact with the Petitioner; (2) thoroughly investigate the case and speak with the victims prior to entry of the Petitioner's plea; (3) request a remand to general sessions court for a preliminary hearing; and (4) explain that Corrections Management Corporation would supervise the Petitioner's release. Following our review, we affirm the judgment of post-conviction court denying relief.

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 ROBERT L. HOLLOWAY, JR., and J. ROSS DYER, JJ., joined.

R. Matthew Rhea, Somerville, Tennessee, for the appellant, Joe G. Manley.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Mark E. Davidson, District Attorney General; Falen M. Chandler, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

The facts underlying the Petitioner's plea, as provided by the State at the guilty plea submission hearing, were as follows: On February 23, 2020, officers were dispatched to

conduct a welfare check at 430 Howard Road based upon information that Eva Lipford was at this address and engaged in a fight with her live-in boyfriend, the Petitioner. When the officers arrived on the scene at approximately 3:02 p.m., the Petitioner ran into the woods.

The officers were met by two juveniles who told them “that their dad was going to kill them if they called 9-1-1 or the police showed up.” Officers then spoke with Ms. Lipford and Ms. Mildred Cannon, the Petitioner’s mother. Ms. Lipford indicated to the officers that she and the Petitioner were fighting because the Petitioner had brought two other individuals to their home, and she had demanded that the Petitioner make one of the individuals leave or else she would take the children and leave. According to Ms. Lipford, this demand upset the Petitioner, and he told Ms. Lipford that he would kill her if she tried to leave the house. The Petitioner then, with a knife in hand, locked Ms. Lipford in the bedroom while yelling at her. In addition, the Petitioner yelled and cursed at Ms. Cannon after he threw Ms. Lipford’s belongings all over the house. He also pushed Ms. Cannon and told her that he would kill her.

A. Guilty Plea Proceedings

Based upon these events, the Petitioner pleaded guilty on April 16, 2021, to aggravated domestic assault, domestic assault, and false imprisonment. *See* Tenn. Code Ann. §§ 39-13-101, -102, -111, -302. Pursuant to the plea agreement, the trial court sentenced the Petitioner to concurrent terms of eight years for aggravated domestic assault as a Range II, multiple offender with release eligibility after service of 35 percent and 11 months and 29 days for both domestic assault and false imprisonment with release eligibility after service of 75 percent. As reflected in the Petitioner’s plea agreement paperwork, the specific terms of the Petitioner’s plea included that his effective eight-year sentence was to be suspended after service of 90 days’ incarceration, that he was to be given 91 days of jail credit, that the remainder of his sentence was to be supervised by “CMC,”¹ and that he was to have no contact with the victims.

Though trial counsel had represented the Petitioner throughout the plea process,² trial counsel was unable to attend the guilty plea submission hearing, so trial counsel had a different attorney conduct the hearing in his stead (“substitute counsel”). At the hearing, the Petitioner “substantially agree[d]” that the facts as recited by the State were true. He stated that he understood the range of punishment for the offenses, that his domestic violence conviction could later be used to enhance the penalty for a subsequent similar

¹ We glean from the record that CMC stands for Corrections Management Corporation.

² The Petitioner had a prior attorney when the case was in general sessions court.

conviction, and that he was prohibited from owning or possessing a firearm for the remainder of his lifetime. He affirmed that he understood that by pleading guilty, he was waiving his rights to a trial by jury and to appeal his convictions. Relative to the trial rights the Petitioner was waiving, the Petitioner affirmed his understanding that those included the ability to have an attorney to represent him at all stages of the trial proceedings, the opportunity to cross-examine the State's witnesses presented against him at trial, and the option to remain silent at trial and not be forced to testify against himself. Furthermore, the Petitioner stated that he was satisfied with his trial counsel's representation, that no one had forced him to plead guilty, and that he had not been promised anything in exchange for his plea. He thanked trial counsel and the prosecutor "very much" for arranging the plea agreement, as well as generally thanking everyone present.

The trial court accepted the Petitioner's plea, finding that the Petitioner had entered into the plea agreement "freely, voluntarily, and intelligently," and stating that the Petitioner was competent to enter his plea and understood the consequences of pleading guilty, "both directly and indirectly." The court then announced the particulars of the Petitioner's sentence, including that the Petitioner would be supervised by CMC. When the court stated that the Petitioner was to have no contact with both victims, the Petitioner inquired if he could have contact with his mother because he was her caregiver and legal guardian. The court explained that part of the plea agreement included no contact with the victims and that this could only be changed by a victim's coming to court and seeking for the order to be lifted. The Petitioner affirmed his understanding of the no-contact provision until, and if, it was changed.

Because the Petitioner had been given credit for time served, the Petitioner, immediately following his plea, was released to the Community Corrections Program to be supervised by CMC. In the months that followed, the Petitioner's supervising case officer filed multiple petitions stating that the Petitioner had violated the conditions of his release. According to the report in the technical record, the Petitioner's suspended sentence was revoked on July 2, 2021, and again on January 7, 2022, and he served 17 days and 34 days, respectively, for those violations. On April 27, 2022, the Petitioner's case officer again sought revocation of the Petitioner's sentence based upon the Petitioner's arrest earlier that month for three counts of coercion of a witness.

B. Post-Conviction Proceedings

The Petitioner's pro se petition for post-conviction relief was filed on April 21, 2022. Counsel was appointed, and an amended petition was filed alleging ineffective

assistance of counsel. Specifically, relative to trial counsel,³ the Petitioner argued that trial counsel was ineffective for failing (1) to seek dismissal of the indictment and a remand of the case to general session court for a preliminary hearing and (2) to effectively communicate and explain the consequences and terms of the plea agreement to the Petitioner. The Petitioner submitted that due to trial counsel's lack of communication, he did not fully understand the nature and consequences of his guilty plea and that had he been adequately informed, he would not have accepted the plea offer. In particular, the Petitioner noted that trial counsel did not tell him that he was prohibited from contacting the victims.

At the post-conviction hearing, trial counsel testified that he had been practicing law for approximately nine years and that he was retained to represent the Petitioner on these charges. When asked how he corresponded with the Petitioner, trial counsel asserted that it "was a little difficult" to do so because "it was hard to track [the Petitioner] down a lot of times." Trial counsel indicated that he spoke with the Petitioner a couple of times by phone and that the Petitioner visited his office once or twice; however, a lot of their correspondence occurred through the Petitioner's "godbrother," Jimmy Moss. Trial counsel estimated that, in total, he met with the Petitioner in person "probably two or three times, maybe four."

Trial counsel testified that he reviewed the discovery in this case and that he spoke with the Petitioner about it. Trial counsel affirmed that he also reviewed any evidence provided by the Petitioner and discussed it with him, specifically recalling that they discussed a video that the Petitioner had given him. Besides a discovery motion, trial counsel did not see any reason to file any other pretrial motions and confirmed that no pretrial hearings took place.

According to trial counsel, he began plea negotiations with the State "a couple of days" after being retained. During plea negotiations, trial counsel and the State discussed the Petitioner's criminal history and the facts of the case. Trial counsel testified that the State was concerned regarding the facts of the case because the Petitioner's actions involved violence against his own mother and threats to children. After the parties reached an agreement, trial counsel reviewed its terms with the Petitioner multiple times, both directly and through Mr. Moss. Trial counsel asserted that he "[a]bsolutely" told the Petitioner about the no-contact order with the victims and that CMC would supervise the Petitioner's release, "not normal state probation." Trial counsel stated that he reviewed with the Petitioner the multiple offender sentence enhancement filed by the State. Trial counsel believed that he would have also reviewed with the Petitioner the rights the

³ In his petition, the Petitioner also made ineffective assistance allegations regarding his prior attorney who represented him in general sessions court. However, because these allegations are not raised on appeal, for the sake of brevity, we will not list them here.

Petitioner was waiving by pleading guilty and that this review would have happened a couple of days before the guilty plea, though trial counsel could not recall a specific conversation.

Trial counsel testified that, though the Petitioner complained his prior attorney did not “do his due diligence” in general sessions court, the Petitioner “absolutely did not” request that this case be remanded back to general sessions court for a preliminary hearing. Trial counsel stated that the Petitioner never mentioned anything about the preliminary hearing, other than that there was not one. According to trial counsel, the Petitioner informed trial counsel that when the Petitioner arrived in general sessions court for the preliminary hearing, his prior attorney requested more money, which the Petitioner did not have. Trial counsel was under the impression that this prior attorney and the Petitioner, thereafter, agreed to “bind over” the case. Trial counsel explained that the Petitioner likely would have lost the favorable plea offer if trial counsel had sought a remand for a preliminary hearing and that he did not think requesting such would have been in the Petitioner’s best interest. In addition, trial counsel indicated that there was no reason to seek a remand once the Petitioner accepted the offer.

Trial counsel stated that it was the Petitioner’s choice, not his, to take the plea offer and that the Petitioner did so without hesitation. Trial counsel described the Petitioner as excited by the plea deal, noting that the Petitioner expressed his appreciation multiple times to trial counsel for procuring its terms. Trial counsel confirmed that he was not present for the entry of the Petitioner’s plea and that substitute counsel “stood in for” him.

Relative to contacting witnesses and victims prior to entry of the guilty plea, trial counsel testified that he tried to speak with Mr. Austin Kee and another person named “Virgil,” to no avail. Trial counsel did not try to contact the victims. Trial counsel explained that he felt no need to contact the victims after the Petitioner accepted the offer and that, regardless, he was unsure if the victims could have provided any useful information given the “pretty damning” discovery. Trial counsel had no knowledge of either victim’s speaking with the State and asking for the Petitioner not to be prosecuted.

According to trial counsel, the Petitioner did not want the no-contact order with Ms. Cannon, his mother, because he took care of her. Trial counsel explained to the Petitioner that it was, nonetheless, a part of the plea offer, and the Petitioner understood that he had to accept this as a condition of the agreement. Trial counsel told the Petitioner that after entry of his plea, Ms. Cannon could request that the court lift the order. A consent order was entered as an exhibit and reflected that Ms. Cannon successfully had the no-contact order lifted on April 21, 2021, just five days after the plea agreement was entered.

Substitute counsel, who had had practiced law for more than five years, confirmed that he represented the Petitioner at the guilty plea submission hearing in place of trial counsel. Substitute counsel reviewed the plea agreement paperwork with the Petitioner and confirmed that trial counsel had also done so. Substitute counsel testified that he believed the Petitioner was fully informed about the plea's terms because the Petitioner kept bragging about "how great a job" trial counsel had done. According to substitute counsel, the Petitioner never expressed any concern entering the guilty plea that day, and substitute counsel noted that the Petitioner thanked everyone in court for what they had done for him.

When asked if the Petitioner was aware that his sentence would be supervised by CMC rather than regular state probation or if substitute counsel explained to the Petitioner the differences between the two, substitute counsel replied, "I asked him a couple of times are you sure this is what you want to do and he said yes. . . . [The Petitioner] has been through this multiple times. He knows the difference." In addition, substitute counsel said that he reviewed the no-contact provision with the Petitioner and confirmed with the Petitioner that he understood everything in the plea offer.

Substitute counsel was shown all of the documents signed by the Petitioner on the day of his plea—the judgments forms, the plea agreement paperwork and the notice regarding a domestic assault conviction; all of which were entered into evidence. As for the plea agreement paperwork, substitute counsel observed that after he reviewed the form with the Petitioner, the Petitioner initialed next to each section showing what the Petitioner was charged with, what he was pleading guilty to, and what his sentence was going to be. Substitute counsel confirmed that the judgment forms and plea agreement paperwork both reflected the no-contact order, as well as the plea agreement paperwork's specifically referencing CMC supervision. Substitute counsel further confirmed that the Petitioner was provided with notice of what happens when someone is convicted of a domestic crime.

The Petitioner testified that he had four different attorneys during these proceedings, which included trial counsel, substitute counsel, and a prior attorney in general sessions court. The Petitioner said that he only met with trial counsel in person one time at trial counsel's office and that, otherwise, he communicated with trial counsel through his friends, including Mr. Moss.

Relative to a preliminary hearing, the Petitioner stated that his prior attorney bound over the case to the grand jury without his permission. According to the Petitioner, the main reason he hired trial counsel was for trial counsel to seek a remand for a preliminary hearing so that Ms. Cannon could tell the court "her side of the story." The Petitioner also said that he gave trial counsel paperwork showing that he married Ms. Lipford 20 days after this incident and that the video he gave to trial counsel showed that he left the premises "before these charges ever came about."

The Petitioner did not recall trial counsel's ever reviewing the complete terms of the plea agreement with him. The Petitioner averred that he did not know substitute counsel would be standing in for trial counsel at the guilty plea submission hearing and that he did not "thoroughly" understand the plea he entered on April 16, 2021, believing he would be receiving a probated sentence of eight years. The Petitioner indicated that he ultimately entered the plea because it meant that he could go home and care for his mother, which made him "ecstatic." In addition, the Petitioner noted that he was on "mental medicine" at the time he entered the plea, taking "Prozac, Depakote, and Seroquel 200 milligram[s]."

According to the Petitioner, he was under the impression that he was going to be supervised by state probation, and no one told him that he was, in fact, going to be supervised by CMC. The Petitioner stated that he had "issues with CMC," and he was unsure if he would have accepted the plea offer had he known of the CMC provision. He testified that he could not do CMC supervision because of his work schedule and because, on previous CMC supervision, he had failed drug tests. The Petitioner explained, "I was a drug addict, alcoholic, and I'm still an alcoholic, but I knew that I couldn't pass CMC is the reason I didn't want to be on CMC."

Relative to the no-contact provision, the Petitioner indicated that he was aware that he was to have no contact with Ms. Lipford but was unaware that he was also to have no contact with Ms. Cannon. According to the Petitioner, upon his release, he went home to Ms. Cannon's residence with the approval of the trial judge after Ms. Cannon filled out some paperwork. The Petitioner also stated that he did not know about the "enhancements" until "[t]he last couple minutes of the plea."

On cross-examination, the Petitioner identified a notice of intent to seek enhanced punishment filed by the State on January 21, 2021, which was admitted as an exhibit. The Petitioner also identified the plea agreement paperwork that he signed and initialed, though he insisted he was not informed about most of its contents. The Petitioner indicated that he had been on probation four or five times and had twice been supervised by CMC. The Petitioner affirmed that he chose to forego a preliminary hearing so he could enter the guilty plea and go home. The Petitioner clarified, however, that he still wanted "it to be understood that" he was innocent of these charges and that he thought his mother was going to be able to tell her side of the story in court.

The Petitioner stated that substitute counsel did not tell him about the CMC supervision, no-contact order, and enhancement notice until after the Petitioner had signed all the documents. When asked why he did not express these complaints in open court at the guilty plea submission hearing, the Petitioner replied that he was excited to be going home. The Petitioner also acknowledged that trial counsel was appointed to represent him

in a subsequent violation proceeding in this case and that his release was revoked at that time, though the Petitioner asserted trial counsel was still supposed to be filing an appeal.

Ms. Cannon, the Petitioner's mother, confirmed that she was a named victim in this case. According to Ms. Cannon, she spoke with trial counsel one time, and they discussed the facts of the case, including her informing trial counsel that the Petitioner only "knocked [her] back" and "never put his hands on" her. Ms. Cannon stated that trial counsel never asked her about the allegations regarding the Petitioner and Ms. Lipford and that they never discussed proceeding to trial where Ms. Cannon would have been able to testify. When asked about her statement to police, Ms. Cannon explained that she was hard of hearing, that multiple people were in the room at the time of the statement, and that "the other ladies were speaking for her." However, Ms. Cannon averred that she told the police the exact same thing that she was stating now—that she did not have a physical altercation with the Petitioner and that he bumped into her as he was running down the hall.

Following the hearing, the post-conviction court entered a written order denying the Petitioner relief. In the order, the post-conviction court first recounted the facts, testimony, and procedural history. The court then found that the Petitioner was not credible and that trial counsel and substitute counsel were. Relative to the Petitioner's mother's testimony, the court noted that Ms. Cannon's testimony at the post-conviction hearing differed from her statement to police and found that Ms. Cannon's testimony was insincere and amounted to merely "an effort to keep her son out of jail." Next, the court determined that trial counsel provided adequate assistance by meeting with the Petitioner and discussing the case, including possible sentences. The court noted that trial counsel had negotiated a time-served plea agreement for the Petitioner and that the Petitioner "was pleased until a violation of supervision was subsequently filed." The court further determined that the Petitioner had failed to establish prejudice from any deficiency. Finally, the court concluded that the Petitioner had knowingly and voluntarily entered his guilty plea and that he understood "the significance and consequences" of his plea. This appeal followed.

II. ANALYSIS

On appeal, the Petitioner contends that the post-conviction court erred by denying his four claims of ineffective assistance of counsel. Specifically, the Petitioner argues that trial counsel was ineffective for failing to (1) communicate and maintain contact with the Petitioner; (2) thoroughly investigate the case and speak with the victims prior to entry of the Petitioner's plea; (3) request a remand to general sessions court for a preliminary hearing; and (4) explain that CMC would supervise his release. The State responds that the court did not err by concluding that the Petitioner received effective assistance of counsel.

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(1); *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 [pled] 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). However, we note that a petitioner’s “[s]olemn declarations in open court carry a strong presumption of verity.” *Blackledge v. Allison*, 431 U.S. 63, 74 (1977).

A petitioner’s sworn responses to the litany of questions posed by the trial judge at the plea submission hearing represent more than lip service. Indeed, the petitioner’s sworn statements and admission of guilt stand as a witness against the petitioner at the post-conviction hearing when the petitioner disavows those statements.

Alfonso C. Camacho v. State, No. M2008-00410-CCA-R3-PC, 2009 WL 2567715, at *7 (Tenn. Crim. App. Aug. 18, 2009).

A. Failure to Communicate

The Petitioner, citing his own testimony at the post-conviction hearing, contends that trial counsel was ineffective because he and trial counsel had “very little contact” with one another, meeting only once in person in trial counsel’s office. According to the Petitioner, this single meeting was insufficient to enable him to “fully grasp the nature of his charges” and the plea agreement. He also notes that they did not “thoroughly discuss the evidence that could have exonerated [the Petitioner] leading to a potential trial.”

Trial counsel stated that he had difficulty tracking down the Petitioner, so much of their correspondence occurred through Mr. Moss. However, trial counsel testified that he met with the Petitioner once or twice in his office and that they met, in total, upwards of four times in person. They also spoke on the phone several times. In addition, trial counsel testified that he reviewed the discovery in this case and the evidence provided to him by the Petitioner. Trial counsel affirmed that he discussed the evidence with the Petitioner, and he specifically recalled discussing a video that the Petitioner had given him. According to trial counsel, after a plea agreement was reached, he reviewed the agreement’s terms with the Petitioner multiple times, both directly and through Mr. Moss. The post-conviction court accredited trial counsel’s testimony and not the Petitioner’s. Specifically, the court found that trial counsel provided adequate assistance in meeting with the Petitioner and discussing the case, including possible sentences.

Moreover, the record is replete with evidence suggesting the Petitioner's satisfaction with trial counsel's performance and the plea offer trial counsel secured for him. The post-conviction court found the same, concluding that the Petitioner was pleased with trial counsel's performance. In addition, the trial court, in accepting the Petitioner's plea, found that the Petitioner had entered into the plea agreement "freely, voluntarily, and intelligently," and stated that the Petitioner was competent to enter his plea and understood the consequences of pleading guilty, "both directly and indirectly." We agree that the Petitioner has failed to prove deficient performance or prejudice in this regard.

B. Failure to Investigate

The Petitioner alleges that trial counsel was ineffective for failing "to thoroughly investigate a defense by failing to inquire about the alleged victims in this matter." According to the Petitioner, trial counsel stopped investigating the case after receiving the State's offer, and trial counsel "had no idea if the alleged victims even had a desire to prosecute."

As for investigating a possible defense strategy, trial counsel indicated that he began negotiating with the State soon after he was retained. According to trial counsel, during those negotiations, they discussed the Petitioner's criminal history and the facts of the case. Trial counsel asserted that he had reviewed discovery and that the State was concerned regarding the facts of the case because the Petitioner's actions involved violence against his own mother and threats to children. Trial counsel's focus in the plea negotiation process, based upon the "pretty damning" discovery, was to minimize the length of time the Petitioner would serve in confinement. Trial counsel successfully procured the Petitioner's immediate, supervised release, which pleased the Petitioner. *See, e.g., Demarcus Jones v. State*, No. W2017-00303-CCA-R3-PC, 2017 WL 4457594, at *9 (Tenn. Crim. App. Oct. 5, 2017) (observing similar facts in concluding that trial counsel was not ineffective).

Relative to interviewing witnesses, trial counsel testified that prior to entry of the Petitioner's guilty plea, he tried to speak with Mr. Austin Kee and another person named "Virgil," to no avail. Trial counsel admitted that he did not try to contact the victims. However, trial counsel explained that there was no reason to contact the victims in this case once the Petitioner accepted the offer. Furthermore, trial counsel stated that, based on the facts of the case, it was questionable whether the victims could have provided any additional, useful information. Trial counsel further stated that he had no knowledge of either victim's speaking with the State and asking for the Petitioner not to be prosecuted.

A petitioner who alleges a failure to investigate on the part of his counsel must allege with specificity what the investigation would have revealed and how it would have altered

the outcome of the trial. *See Owens v. State*, 13 S.W.3d 742, 756 (Tenn. Crim. App. 1999). Moreover, “[w]hen a petitioner contends that trial counsel failed to discover, interview, or present witnesses in support of his defense, these witnesses should be presented by the petitioner at the evidentiary hearing.” *Black v. State*, 794 S.W.2d 752, 758 (Tenn. 1990).

The Petitioner did not present any evidence at the post-conviction hearing that he, in fact, married Ms. Lipford. Moreover, the Petitioner did not present any witnesses other than his mother, and Ms. Cannon’s testimony did not in any way dispute the Petitioner’s assault of Ms. Lipford. The post-conviction court did not find Ms. Cannon credible and concluded that her testimony was based simply upon her desire to keep her son out of jail. The post-conviction court also noted that Ms. Cannon’s testimony at the post-conviction hearing differed from her statement to police, and we agree. Contrary to Ms. Cannon’s post-conviction hearing testimony, the facts, as agreed to by the Petitioner at the guilty plea submission hearing, included reference to Ms. Cannon’s statements to the officers. Ms. Cannon told the officers that the Petitioner yelled and cursed at her after he threw Ms. Lipford’s belongings all over the house, that he pushed Ms. Cannon, and that he threatened to kill Ms. Cannon.

We agree with the post-conviction court that trial counsel did not deficiently perform or cause the Petitioner prejudice. Therefore, the post-conviction court properly denied the Petitioner relief on this claim.

C. Failure to Seek Remand for Preliminary Hearing

The Petitioner contends that trial counsel was ineffective for failing to request a remand to general sessions court for a preliminary hearing. The Petitioner states that he still wanted Ms. Cannon to testify before the court in a preliminary hearing and proclaim the Petitioner’s innocence.

Again, the post-conviction court accredited trial counsel’s testimony over that of the Petitioner’s and determined that trial counsel performed adequately. Trial counsel testified that the Petitioner “absolutely did not” request that this case be remanded back to general sessions court for a preliminary hearing and that the Petitioner only mentioned that no preliminary hearing took place. Trial counsel said that he believed that the Petitioner’s prior attorney and the Petitioner agreed to “bind over” the case. Moreover, trial counsel testified that if he had sought a remand, the Petitioner likely would have lost the favorable offer. The Petitioner affirmed that he chose to forego a preliminary hearing because he was pleased with the plea agreement, though he still thought his mother was going to be able to tell her side of the story in court. Again, the post-conviction court did not find Ms. Cannon to be truthful.

The record indicates that the Petitioner was aware of the evidence against him at the time he entered his guilty plea. The Petitioner has not presented any evidence that the waiver of the preliminary hearing affected the outcome of these proceedings. Therefore, the post-conviction court properly denied the Petitioner relief on this claim for his failure to show deficient performance or prejudice.

D. Failure to Advise of CMC Supervision

The Petitioner contends that trial counsel was ineffective for failing to tell him that he would be on CMC supervision instead of “regular state probation.” According to the Petitioner, it was not until he was entering his guilty plea that he realized he would be placed on CMC supervision.

The Petitioner stated that he had “issues with CMC,” and he was unsure if he would have accepted the plea offer had he known of the CMC provision. However, the Petitioner was familiar with the system, testifying that he had been on probation four or five times and had twice been supervised by CMC. In fact, according to his supervising case officer’s report, his CMC supervision in this case had twice been revoked before being reinstated. The Petitioner was “ecstatic” with the terms of his plea agreement, which included his immediate release with time served, and he remained that way until almost a year later when he had been arrested for three counts of coercion of a witness.

Once more, we note that the post-conviction court did not find the Petitioner’s testimony credible. The post-conviction court accredited trial counsel’s testimony that he “[a]bsolutely” told the Petitioner that CMC would supervise his release, “not normal state probation.” Moreover, the court determined that the Petitioner “was fully aware of the direct consequences of the plea, including the sentence actually received” and noted that the Petitioner “was informed at the plea hearing of the sentence and the supervision.” Substitute counsel reviewed the plea agreement paperwork with the Petitioner, which the Petitioner signed and initialed. The plea agreement paperwork specifically referenced CMC supervision three different times. The Petitioner expressed no dissatisfaction with his plea agreement when the trial court stated at the guilty plea hearing that his sentence would be supervised by CMC; however, the Petitioner did express dissatisfaction with the no-contact provision.

The post-conviction court properly found that the Petitioner had not established deficient performance or prejudice in this regard. Moreover, we agree with the court that the Petitioner made an informed decision to plead guilty with full awareness of the consequences of the plea. He is not entitled to relief.

III. CONCLUSION

Upon consideration of the foregoing and the record as a whole, we agree that the Petitioner has failed to show that trial counsel was ineffective. Accordingly, the judgment of the post-conviction court is affirmed.

KYLE A. HIXSON, JUDGE