

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

FILED

05/17/2023

Clerk of the  
Appellate Courts

**RAYMON MUHAMMAD v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County  
Nos. C1702059, 17-01313 J. Robert Carter, Jr., Judge**

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**No. W2022-00027-CCA-R3-PC**

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The Petitioner, Raymon Muhammad, filed a post-conviction petition in the Shelby County Criminal Court, seeking relief from his conviction of first degree premeditated murder and resulting life sentence. The post-conviction court denied the petition, and the Petitioner appeals. Upon our review, we affirm the judgment of the post-conviction court.

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

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

Gerald S. Green, Memphis, Tennessee, for the appellant, Raymon Muhammad.

Jonathan Skrmetti, Attorney General and Reporter; Abigail H. Rinard, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Neil Umsted, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

The proof at trial showed that on December 23, 2015, John Jones was killed in a drive-by shooting while he was sitting on the front porch of a home on McMillan Street in Memphis. *State v. Raymon Muhammad*, No. W2018-02141-CCA-R3-CD, 2019 WL 4137430, at \*1 (Tenn. Crim. App. Aug. 30, 2019). When the police responded to the scene, they found the victim lying face-down on the porch and the home “riddled with bullet holes.” *Id.* An investigation led the police to the Petitioner, who gave a statement in which he claimed that Derrick Matthews drove by the home and shot the victim and that the Petitioner was sitting in the back seat. *Id.* However, in a second police interview, the Petitioner ““became emotional,”” started crying, and admitted he was the shooter. *Id.* The

Petitioner told the police that Mr. Matthews had quarreled with the victim at a strip club about one week before the shooting, that Mr. Matthews drove the Petitioner by the house and told him to shoot the victim, and that Mr. Matthews paid the Petitioner \$1,000 for the shooting. *Id.*

A jury convicted the Petitioner as charged of first degree premeditated murder, and the trial court sentenced him to life in confinement. *Id.* On direct appeal of his conviction, the Petitioner claimed that the evidence was insufficient to show that he acted with premeditation. *Id.* This court found the evidence sufficient, explaining as follows:

The evidence adduced at trial established that Mr. Matthews quarreled with the victim. At the behest of Mr. Matthews, the [Petitioner] stole a car and picked Mr. Matthews up. Mr. Matthews got into the driver's seat, gave the [Petitioner] an AK-47, and told him to start shooting as soon as he saw the victim. The [Petitioner] did as Mr. Matthews asked. One of the bullets struck the victim, and he fell to the floor of the porch. Mr. Matthews and the [Petitioner] drove away. The [Petitioner] dumped the stolen car at a nearby apartment complex, and Mr. Matthews paid the [Petitioner] \$1,000 for killing the victim. The [Petitioner's] preparations before the killing and calmness afterwards, in addition to the remuneration provided to him by Mr. Matthews, all support a finding that he premeditated the victim's murder. Although he claims on appeal that he acted under duress because he was afraid of Mr. Matthews, no evidence supported such a claim.

*Id.* at \*4.

After this court affirmed the Petitioner's conviction, he filed a timely pro se petition for post-conviction relief using the form petition provided in Appendix A of Tennessee Supreme Court Rule 28. The form petition listed twelve possible grounds for relief, and the Petitioner marked that his conviction was based on a violation of the privilege against self-incrimination and that he was denied the effective assistance of counsel. The Petitioner also marked on the form that he wished to have counsel appointed. The post-conviction court appointed counsel, and counsel did not file an amended petition.

The post-conviction court held an evidentiary hearing on November 9, 2021. At the outset of the hearing, post-conviction counsel asserted that trial counsel was ineffective for failing to file a motion to suppress the Petitioner's "unmirandized" statement. Post-conviction counsel also advised the court that "there was an offer that was held out by the State and never rejected, never revoked and that [the Petitioner] wanted."

Trial counsel testified for the Petitioner that the Petitioner gave two statements to the police. In his first statement, the Petitioner said Mr. Matthews shot the victim. In his second statement, the Petitioner said he shot the victim. Throughout the statements, the Petitioner said he was scared or afraid of Mr. Matthews. Trial counsel thought the statements could be useful at trial because they might result in a duress instruction, which could give the jury “something to consider other than a guilty as charged verdict.” Although trial counsel did not think duress was a complete defense to the crime, he thought duress could mitigate the Petitioner’s actions.

Trial counsel testified that the Petitioner pled guilty to “a number” of offenses, including aggravated robbery, before trial. The assistant district attorney general offered to let the Petitioner plead guilty in the instant case in exchange for a twenty-year sentence consecutive to the previous sentences or in exchange for a twenty-five-year sentence concurrent with the previous sentences. Trial counsel conveyed the offer to the Petitioner and hoped he would accept it. The Petitioner asked at least one time to talk with his family about the offer but ultimately decided not to accept it. As the trial date approached, the Petitioner changed his mind. Trial counsel went to the assistant district attorney general and “asked if we could get that offer back,” but the assistant district attorney general said the offer was no longer available. Therefore, the Petitioner had no choice but to proceed to trial. The Petitioner would have accepted the offer the day of trial if the offer had been available.

Trial counsel testified that in making the plea offer to the Petitioner, the State wanted the Petitioner “to cooperate.” The State “really wanted” Mr. Matthews because Mr. Matthews set up the shooting, but the Petitioner did not want to testify against Mr. Matthews. By the time the Petitioner said he would accept the offer, which was Thursday or Friday before the Monday trial, the assistant district attorney general said the Petitioner had waited too long to accept it.

On cross-examination, trial counsel testified that he was licensed to practice law in 1993 and conducted “[w]ell over a hundred” trials as a defense attorney. He represented the Petitioner from February 2017 until trial in October 2018. The Petitioner was very young and soft-spoken, and trial counsel “felt bad for him in being in such trouble at such a young age.” Trial counsel said that he and the Petitioner had “a decent business relationship” and that he was hoping the Petitioner would take his advice and accept the State’s plea offer. However, the Petitioner “just wouldn’t do it.” Trial counsel thought the Petitioner’s statements to the police were “pretty much all a jury would need to hear” to convict him because the Petitioner told the police that he was the gunman and that he was paid to shoot the victim. Trial counsel said that if the Petitioner had been willing to cooperate with the state “a little bit,” he may have been convicted of a lesser offense and received a lesser sentence.

Trial counsel testified that his notes showed that he met with the Petitioner “a number of times” and that they discussed the Petitioner’s trial and other cases. Trial counsel did not see any issues that warranted filing a motion to suppress the Petitioner’s statements. Regardless, the Petitioner said “things” in his statements that might have been helpful to his defense.

The Petitioner testified that he initially did not want to accept the State’s plea offer but that he subsequently decided to accept it. The Petitioner said that on Friday, September 28, 2018, trial counsel visited him and “had a paper with the plea offer wrote out on it and asked do I want to sign it. I told him yeah, I signed it.” The following Monday, the Petitioner thought he was going to court to “do whatever the procedures were to accept [his] deal.” Instead, trial counsel told the Petitioner in the courtroom that the assistant district attorney general would not let the Petitioner accept the offer. Trial counsel never told him the State had revoked the offer. He said he thought that he accepted the offer before the State revoked it and that he and the State had an agreement. The Petitioner never told the trial court he wanted to accept the offer and not go to trial because he did not know he could talk to the trial judge. The Petitioner requested that the post-conviction court put him in the position he would have been if he had accepted the State’s twenty-five-year offer.

The Petitioner testified that he asked trial counsel “way before trial” to file a motion to suppress his statements. Trial counsel kept asking the Petitioner why he wanted a suppression motion filed, and the Petitioner told trial counsel that his statements would hurt his defense. Trial counsel never told the Petitioner that the statements could be helpful.

On cross-examination, the Petitioner acknowledged that trial counsel conveyed the twenty-five-year offer to him “early on” in trial counsel’s representation. The Petitioner told trial counsel that he wanted to consult with his family. The Petitioner said that he and trial counsel had been talking about an offer and that he “took the 25.” The Petitioner acknowledged that he wanted trial counsel to suppress his statements because they were damaging to his defense.

On redirect-examination, the Petitioner acknowledged that the police gave him *Miranda* warnings prior to one statement but not the other statement. On recross-examination, the Petitioner acknowledged that he gave both statements on the same day. At that point, the State showed him an Advice of Rights form dated March 1, 2016, at 5:51 p.m. The Petitioner acknowledged that he signed the form before he gave his first statement. On redirect-examination, the Petitioner said that he was eighteen years old when he signed the form and that the police interrogated him from 3:00 p.m. to 11:00 p.m.

At the conclusion of the Petitioner's testimony, post-conviction counsel argued that under "fundamental contract law," the State did not withdraw the plea offer before the Petitioner accepted it; therefore, the post-conviction court should either set the conviction aside or require specific performance of the plea agreement. Post-conviction counsel also argued that trial counsel's strategy in not filing a motion to suppress the Petitioner's statements was deficient performance.

On December 10, 2021, the post-conviction court entered an order denying the petition. In the order, the post-conviction court found that the State made a plea offer, that the Petitioner rejected the offer, that the State prepared for trial, and that the Petitioner sought to compel the State to re-extend the offer on the "eve" of trial. The post-conviction court noted that there was no guaranteed right to guilty plea negotiations. Regarding the Petitioner's claim that trial counsel was ineffective for failing to file a motion to suppress, the post-conviction court stated that the Petitioner did not present any proof to suggest a basis for suppression. The post-conviction court concluded that the Petitioner "demonstrates a case of 'buyer's remorse' with the benefit of viewing things in hindsight" and that he failed to show trial counsel was deficient or that he was prejudiced by any deficiency.

### ANALYSIS

On appeal, the Petitioner has abandoned his claim that trial counsel was ineffective for failing to file a motion to suppress his statements but maintains that he is entitled to post-conviction relief because he relied on the plea offer made by the State without knowing there was a time limit to accept the offer. The State asserts that while the Petitioner appears to suggest that trial counsel was ineffective, he does not argue that trial counsel was deficient or that he was prejudiced by any deficiency. The State also asserts that, in any event, the Petitioner has failed to show that trial counsel was ineffective. We agree with the State on both points.

Post-conviction relief "shall be granted 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." Tenn. Code Ann. § 40-30-103. The petitioner bears the burden of proving factual allegations by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f). When an evidentiary hearing is held in the post-conviction setting, the findings of fact made by the court are conclusive on appeal unless the evidence preponderates against them. *See Wiley v. State*, 183 S.W.3d 317, 325 (Tenn. 2006). When reviewing factual issues, the appellate court will not reweigh the evidence and will instead defer to the post-conviction court's findings as to the credibility of witnesses or the weight of their testimony. *Id.* However, review of a post-conviction court's application of the law to the facts of the case is de novo, with no presumption of

correctness. *See Ruff v. State*, 978 S.W.2d 95, 96 (Tenn. 1998). The issue of ineffective assistance of counsel, which presents mixed questions of fact and law, is reviewed de novo, with a presumption of correctness given only to the post-conviction court's findings of fact. *See Fields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001); *Burns v. State*, 6 S.W.3d 453, 461 (Tenn. 1999).

To establish a claim of ineffective assistance of counsel, the petitioner has the burden to show both that trial counsel's performance was deficient and that counsel's deficient performance prejudiced the outcome of the proceeding. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see State v. Taylor*, 968 S.W.2d 900, 905 (Tenn. Crim. App. 1997) (noting that the same standard for determining ineffective assistance of counsel that is applied in federal cases also applies in Tennessee). The *Strickland* standard is a two-prong test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

466 U.S. at 687.

The deficient performance prong of the test is satisfied by showing that "counsel's acts or omissions were so serious as to fall below an objective standard of reasonableness under prevailing professional norms." *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996) (citing *Strickland*, 466 U.S. at 688; *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975)). The reviewing court must indulge a strong presumption that the conduct of counsel falls within the range of reasonable professional assistance, *see Strickland*, 466 U.S. at 690, and may not second-guess the tactical and strategic choices made by trial counsel unless those choices were uninformed because of inadequate preparation. *See Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982).

The prejudice prong of the test is satisfied by showing a reasonable probability, i.e., a "probability sufficient to undermine confidence in the outcome," that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

Courts need not approach the *Strickland* test in a specific order or even "address both components of the inquiry if the defendant makes an insufficient showing on one."

466 U.S. at 697; *see Goad*, 938 S.W.2d at 370 (stating that “failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim”).

Turning to the present case, we initially note that the post-conviction court should have dismissed the petition on procedural grounds. When a petitioner files a petition for post-conviction relief, the petitioner “shall include allegations of fact supporting each claim for relief set forth in the petition and allegations of fact explaining why each ground for relief was not previously presented in any earlier proceeding.” Tenn. Code Ann. § 40-30-104(e); *see* Tenn. Sup. Ct. R. 28, § 5(E)(4). “A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings. Failure to state a factual basis for the grounds alleged shall result in immediate dismissal of the petition.” Tenn. Code Ann. § 40-30-106(d); *see* Tenn. Sup. Ct. R. 28, § 5(F)(3). If the petitioner is pro se, the post-conviction court may enter an order stating that the petitioner must file an amended petition or the petition will be dismissed. Tenn. Code Ann. § 40-30-106(d). If the amended petition is still “incomplete” after the petitioner files an amended petition, the post-conviction court can appoint counsel to file a “complete petition.” Tenn. Code Ann. § 40-30-106(e).

Here, appointed counsel did not file an amended petition. “At least minimal compliance with the provisions of [Tennessee Code Annotated section] 40-30-104 is necessary for the trial court to determine if the petition states grounds for relief.” *State v. Willis A. Taylor*, No. C.C.A. 57, 1989 WL 48501, at \*1 (Tenn. Crim. App. May 10, 1989) (citing *State v. Higgins*, 729 S.W.2d 288 (Tenn. Crim. App. 1987)). Given that the Petitioner did not include any facts to support his claims in his pro se petition and that appointed counsel did not file an amended petition setting forth such facts, the petition did not state a “colorable claim” for relief. *See* Tenn. Code Ann. § 40-30-106(f); Tenn. Sup. Ct. R. 28, § 2(H) (defining “colorable claim” as “a claim, in a petition for post-conviction relief, that, if taken as true, and in the light most favorable to the petitioner, would entitle the petitioner to relief under the Post-Conviction Procedure Act”). However, because the court proceeded with an evidentiary hearing and ruled on the merits of the petition, we will address whether the post-conviction court properly concluded that the Petitioner did not receive the ineffective assistance of counsel.

As noted by the State, the Petitioner does not explain on appeal how trial counsel was deficient or how he was prejudiced by counsel’s deficient performance. Through his testimony, the Petitioner appeared to claim at the evidentiary hearing that trial counsel was ineffective because trial counsel never told him there was a time limit to accept the State’s plea offer or that the State had revoked the offer. In his appellate brief, though, the Petitioner contends there is no evidence trial counsel knew there was a time limit to accept the offer. Regardless, the post-conviction court inherently accredited trial counsel’s

testimony that the State made an offer, that he conveyed the offer to the Petitioner, and that the Petitioner rejected the offer. “When a defendant rejects a plea bargain offer out of hand, his attorney cannot be blamed for his poor decision.” *Alonzo Williams v. State*, No. 1100, 1987 WL 7319, at \*2 (Tenn. Crim. App. Mar. 4, 1987). Therefore, the record supports the post-conviction court’s conclusion that trial counsel was not deficient.

To the extent the Petitioner is arguing that trial counsel was ineffective for failing to try to enforce the agreement because the Petitioner relied on the offer, our supreme court has held that a plea agreement is not an enforceable contract until it is accepted by the trial court. *See State v. Howington*, 907 S.W.2d 403, 407 (Tenn. 1995). “There is, however, a condition under which courts have enforced plea agreements even prior to court approval: when the defendant has relied on the agreement to his detriment. A defendant who relies on the government’s promise to his detriment may be entitled to specific performance under due process.” *State v. Anthony Bobo*, No. W2015-00930-CCA-R3-CD, 2016 WL 7799284, at \*5 (Tenn. Crim. App. Mar. 2, 2016) (citing *United States v. Vizcarrondo-Casanova*, 763 F.3d 89, 102-04 (1st Cir. 2014)).

The post-conviction court found that the Petitioner rejected the plea offer. Thus, there was no contract formed between the Petitioner and the State. Moreover, the Petitioner offered no proof at the evidentiary hearing that he relied on the State’s offer “to his detriment.” To the contrary, trial counsel testified that the Petitioner refused to cooperate at all with the State. Thus, the record again supports the post-conviction court’s conclusion that trial counsel’s performance was not deficient.

### **CONCLUSION**

Based upon our review, we conclude that the post-conviction court properly denied the petition for post-conviction relief.

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JOHN W. CAMPBELL, SR., JUDGE