IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs June 5, 2018

DERRICK PIERCE v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 14-05852 J. Robert Carter, Jr., Judge

No. W2017-01733-CCA-R3-PC

Petitioner, Derrick Pierce, appeals the denial of his post-conviction petition. Petitioner argues that he received ineffective assistance of counsel at trial which forced him to plead guilty after the trial began, and the State had presented proof. Following a review of the briefs of the parties and the entire record, we affirm the judgment of the post-conviction court.

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

THOMAS T. WOODALL, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ROBERT W. WEDEMEYER, JJ., joined.

Kirk W. Stewart, Memphis, Tennessee, for the appellant, Derrick Pierce.

Herbert H. Slatery III, Attorney General and Reporter; Jonathan H. Wardle, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Glen Baity and Scott Smith, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Background

Petitioner, along with approximately twenty-two co-defendants, was indicted for conspiracy to possess with the intent to sell or deliver a controlled substance, to wit: cocaine in an amount greater than three hundred grams, a Class A felony. He was extradited from Texas, where he was in custody on another matter. Pre-trial motions were heard, and the case was set for trial. On the third day of trial, before resumption of the State's proof, Petitioner agreed to plead guilty. On December 2, 2015, Petitioner pled guilty, pursuant to a negotiated plea agreement, to the lesser-included offense of criminal

attempt: conspiracy to possess with intent to sell more than three hundred grams of cocaine, a Class B felony. He received a fine of $2,000 and an agreed sentence of twelve years as a Range One mitigated offender to be served consecutively to a sentence he was already serving in Texas. Petitioner filed a direct appeal of his conviction which was dismissed because Petitioner failed to file a brief. *State v. Derrick Pierce*, No. W2016-00134-CCA-R3-CD (Tenn. Crim. App. filed Jan. 15, 2016). Thereafter, Petitioner filed this timely petition for post-conviction relief.

Guilty Plea Submission Hearing

The facts of the case as presented by the State at the guilty plea submission hearing are as follows:

> The facts of the matter, your Honor's heard most of the facts in this matter already. With the officers from the Memphis Police Department obtained court approval for a wiretap on the phone of one Warren Pratcher, he was a drug dealer in Memphis and Shelby County, Tennessee.
>
> On September the 9th through September the 13th calls were intercepted between a number from Texas that was identified as [Petitioner's] number in which the two conspired with each other to bring about five kilograms of cocaine from Dallas to Memphis, Tennessee, for the purpose of resell.
>
> There's various proof in this case that the telephone that was intercepted belongs to [Petitioner]. Some of that proof has already been presented at trial. There's other proof that would be presented today that [Petitioner] was affirmatively established in using that telephone and conspiring with Mr. Pratcher.
>
> We'd ask counsel to stipulate. This is an Alford plea, so we're not asking for any sort of voir dire of [Petitioner]. Ask counsel to stipulate and your Honor to accept the plea.

Trial counsel stipulated that there was "enough evidence to go there [.]"

Post-Conviction Hearing

Trial counsel testified that he was hired by Petitioner's family while Petitioner was awaiting extradition from Texas. He said that Petitioner had been indicted before he was

brought to Tennessee. Trial counsel testified that he met with Petitioner many times during the time that he represented Petitioner. He thought that he met with Petitioner "at least five or six times in jail, something to that," and they also met on court dates. Trial counsel testified that Petitioner ultimately pled guilty to twelve years at twenty percent. He said that before trial Petitioner had originally been offered a plea of twelve years, which then went down to ten or seven years, until the State ultimately offered a plea of five years at twenty percent, which Petitioner declined. Trial counsel testified that he advised Petitioner multiple times before trial to accept the plea. He thought that this plea offer was available to Petitioner until sometime after the suppression hearing.

Concerning the State's evidence at the time of trial, trial counsel testified:

> Well, a lot of it was circumstantial. I remember a lot of the discovery had to do with a CS [Cell Site], CSLI [Cell-Site Location Information] data dealing with where certain phones connected with cell phone towers in the area where they alleged that he lived. And that and then in addition to that, there were some photographs of him and some of the co-defendants I think in years past. Just simple being together, just I guess photos showing an association of some kind.

Trial counsel had listened to recorded phone calls that the State had between co-defendant Warren Pratcher and an "unknown individual" that the State said was Petitioner.

Trial counsel testified that co-defendant Cameron Wesley was supposed to testify on the last day of trial; however, Petitioner pled guilty on the third day of trial. He thought that Mr. Wesley was "suppose[d] to testify allegedly to the connection for him saying yes, it was [Petitioner] or no, it was not [Petitioner], something to that effect but it never actually came to that point."

Trial counsel remembered a "few motions in limine pretrial." He was successful in one motion in limine prohibiting the State from talking about the "Dallas DEA [Drug Enforcement Administration]." Trial counsel testified that he was not given any discovery concerning the Dallas DEA, and he did not know anything about the investigation. He said: "I couldn't get any other than the fact that the affidavits dealing with the CSLI [Cell-Site Location Information] phone records, part of the affidavit where the officer signed it did mention, did make mention of Dallas DEA."

Trial counsel thought that Petitioner faced a sentence of twenty-five to forty years due to his prior convictions in the State of Texas. It was noted that Petitioner was a Range Two offender. Trial counsel thought that he reviewed the sentencing range with

Petitioner before trial. He did not recall telling Petitioner after the second day of trial that Petitioner would probably lose. Trial counsel testified: "[Petitioner] approached me immediately at the end of the day two and he was very freaked out and he wanted to, he wanted me to approach the State about possibly a plea." Trial counsel testified that at the time of Petitioner's trial, he had been practicing law for approximately three years, and he believed that he had been involved in a couple of jury trials, but he could not recall for sure.

Trial counsel testified that he objected to Detective Overly's testimony during which he translated slang to the jury. He also objected to "the CSLI data on towers near [Petitioner's] house and the photograph, old photographs . . . with showing him with some of the co-conspirators, co-defendants." Some of the pictures showed Petitioner, Mr. Pratcher, and Mr. Wesley. Trial counsel testified that he objected to Detective Overly's testimony identifying Petitioner's voice as that of the unknown caller on the recorded phone calls. He also objected to the mentioning of nicknames on the recordings without laying a foundation. When asked if he was reprimanded by the trial court during his opening statement, trial counsel testified: "I know sometimes in opening arguments I could, I could potentially say something that might be objectionable. I don't, I don't recall what I said specifically. I'm sure there was a couple of times I was reprimanded or objected to during the trial." Trial counsel agreed that the trial court "probably" interrupted his opening statement and told him not to argue the case. He said: "Then I think, I probably, I probably disagreed as to whether I was arguing but I did comply with it." The post-conviction court also noted: "And because it tends to be on not just [trial counsel] but on just about everyone. The artful way is to do it in such a way that it doesn't seem like you're arguing."

Trial counsel agreed that he asked Detective Overly if the DEA assisted with their investigation and if it was the Dallas DEA or the Tennessee DEA. As noted above, trial counsel had previously filed a successful motion in limine asking that the State not refer to the Dallas DEA. Concerning this issue, trial counsel testified that for "tactical reasons I decided to actually bring it up at that point since I felt that the evidence was being painted a certain way, so I decided to change course, open the door up and question the detective about the Dallas DEA connection." Trial counsel agreed that he asked Detective Overly questions about the Dallas DEA that he did not know the answer to. He further testified:

> I knew that there was an issue with the discovery. I don't specifically recall, I might have to look at what you're talking about in the transcript. But I do know that was an issue. I wanted to know, I believe we wanted some kind of answers specifically as to how the Dallas DEA

> corroborated his identity and those numbers. I think that's why, why I had originally opened, opened that door.

Trial counsel did not believe that Detective Overly satisfactorily answered the question as to how the Dallas DEA identified Petitioner.

On cross-examination, trial counsel testified that Petitioner approached him about pleading guilty after the close of the State's proof on the second day of trial. At that time, the State's previous offer had been withdrawn. Trial counsel was then able to negotiate an offer of twelve years at thirty percent which he negotiated further down to twelve years at twenty percent. Trial counsel acknowledged that the offer was better than Petitioner's potential sentence of twenty-five to forty years at thirty-five percent.

Trial counsel testified that identify was a major part of Petitioner's trial, and he felt that there was a "lot of circumstantial evidence" and that he "objected to most of it[.]" Trial counsel noted that he objected to nicknames of "Fat Daddy" and "Donkey" being linked to Petitioner and that there were calls made to and from two different girlfriends. He objected because there was no foundation for the calls, and there were no calls that he had been made aware of to be played. He also objected to a cell phone that was attributed to Petitioner and the location with respect to cell phone towers.

Petitioner testified that trial counsel visited him in jail and "somewhat" reviewed discovery with him. He said that trial counsel did not describe any of the pictures that were shown during trial. Petitioner testified: "[H]e basically said that he went and seen a suitcase full of pictures. Said nothing, told me nothing to worry about." Petitioner testified that he was given the following plea offers before trial: fifteen years at thirty percent; ten years at thirty percent; eight years at thirty percent; five years at thirty percent; four years at thirty percent; and five years at twenty percent. He said that the final offer was five years at twenty percent.

When asked if trial counsel advised him to accept the plea offer, Petitioner testified:

> He basically told me that I have a great chance at trial. That, I mean, there's nothing, there's nothing here on me. He said basically the file is up there on me. He said they're going to, they're going to just dance and prance where it's nothing. State can't prove their argument.

Petitioner testified that trial counsel was not prepared for trial. He said:

> And we had a confrontation after that first - - after the second day of trial, you know, what's going on, you know, you explain all this to me but you're not doing nothing what you're saying you[']r[e] doing. And you're not, you know, your heads not even up.
>
> Now the judge even have to point tell it, have to even correct, correct some things that's going on. You're going to have to take fault, fault for that, if you can't prove facts, don't say it. So it's was like it was too much going on. And I'm asking him like, come on, if you, if you're going to mess it up you told me before trial, you told me you had my best interests at heart.

He also said that trial counsel told his family that he had Petitioner "plead out because he was unprepared." Petitioner testified that trial counsel did not know that some of the photographs would be presented at trial.

Petitioner testified that he plead guilty because trial counsel told him that he was unprepared for trial and that Petitioner was going to lose his case. He further testified that trial counsel told him that he would have to serve his sentence at forty-five percent and that Petitioner's family wanted him to accept the plea offer. Petitioner said:

> You know, he showed me his phone like he's been talking with my kid's mother and my sister. I'm like, like, man, no, what I mean, no. At first, first all he said was fifteen at twenty percent. I'm no, man, you might as well finish the trial with that kind of time.
>
> He come back, showed me the phone, he like, he been calling and talking to them again. He said, no, they really want you to take that. I'm unprepared, they got evidence I didn't see, I'm not prepared for trial. Go on and just take the twelve at twenty, I'm begging you please. I know you're mad but take the twelve at twenty. I don't want to mess your life up.

Petitioner testified that his identity was the main issue at trial and that the State had agreed not to use names and allow the jury to listen to the different voices to put everything together. He said that the prosecutor had also instructed a police officer not to mention the Dallas DEA. Petitioner testified that trial counsel then opened the door, and the officer testified that the DEA had confirmed his identity. When asked if that impacted his trial, Petitioner said: "Yes. Because I - - from even before trial I said who was the DEA or how did they indexing [sic] me? How they say this is me? How they

say this is me? But they never have a name, never gave, never gave nothing." He said that the testimony showed that two agencies had identified him.

Petitioner testified that the jury reacted to trial counsel's opening statement by shaking their heads, "looking over at me, tucking their fist, you know basically trying to hold in a laugh like he was, like he was not here with us." Petitioner testified that he had been involved in other jury trials, and that compared to his other attorneys, trial counsel was not in his "best interest," and everything that trial counsel told him was a lie. Petitioner admitted that he was aware of trial counsel's experience at the time that counsel was hired but trial counsel told him that his father, who had been an attorney for thirty years, would be "side-by-side" with trial counsel if the case went to trial to help with Petitioner's case. Petitioner noted that trial counsel's mother was also a "civil attorney." He said that neither of trial counsel's parents met with him or appeared in court. Petitioner testified that if trial counsel had been an effective lawyer, Petitioner would not have pled guilty during the middle of trial. He said that he did not understand that a twenty-percent release eligibility was not automatic. Petitioner testified that he had served twenty percent of his twelve-year sentence but had been denied parole.

Petitioner testified that trial counsel told him that Cameron Wesley was going to testify. He said:

> He told me that he was going to testify but he basically said that dude's going to (indiscernible) you. In his Q and A he had nothing to say about you. Had nothing period to say about you at all. So he's trying to get himself out of this charge. He's going to get up and tell whatever he got to tell them to get out of this case.

Petitioner testified that he did not know Mr. Wesley, and he did not have confidence in trial counsel's cross-examination of Mr. Wesley because trial counsel did not know what Mr. Wesley was going to say.

On cross-examination, Petitioner understood that the State's original plea offer was revoked when he decided to go to trial. He said that after the trial began, trial counsel begged him to plead guilty because trial counsel was unprepared for trial. Petitioner claimed that he had recorded conversations of trial counsel telling Petitioner and his sister that he was unprepared for trial. He said that trial counsel told him to "[j]ust take this twelve at twenty, as a mitigated defendant and they'll kick you out at your RED date." Petitioner denied that he developed an interest in pleading guilty after seeing the jury picked and hearing from five of the State's witnesses.

Paul Hagerman, an assistant district attorney general, testified that he prosecuted Petitioner's case. He said: "I started with [Petitioner's] case, Mr. Scruggs took over in the middle and then I retook over and finished [Petitioner's] case." Mr. Hagerman noted that the discovery in Petitioner's case was voluminous and consisted of "hundreds of written pages, numerous intercepted phone calls." He said that there was a point where a "State's witness changed his mind about testifying in which officers had to gather new phone records and new information and new jail calls and such."

Mr. Hagerman testified that he and trial counsel discussed the case in general and a plea offer. He said that trial counsel also met with Mr. Scruggs two or three times. Mr. Hagerman testified that trial counsel reviewed discovery, and on one occasion, Mr. Hagerman sat down with him in the library and they reviewed the physical exhibits and property seized from Petitioner and other defendants. They also looked at pictures of the "various defendants together and things like that." Mr. Hagerman said that he and trial counsel "talked about the case ad nauseam a couple [of] times," and they both tried their best to settle the case.

Concerning trial counsel's preparation for the case, Mr. Hagerman testified:

> It was clear meeting with [trial counsel] that he was in tight communication with [Petitioner's] family because he would have details and information sort of on his side of the ledger that demonstrated excellent awareness of, you know, facts that he was going to use in his defense and things.
>
> We definitely talked about the case that the State had. He would ask questions about it. He filed motions with regard trying to suppress certain evidence. He was very familiar with the case.

Mr. Hagerman further testified that on the day of trial, trial counsel was well acquainted with the facts of the case and the State's theory because they had talked about it numerous times. He specifically stated that trial counsel was "familiar and ready." Mr. Hagerman testified that based on the proof presented by the State after the trial began, the proof against Petitioner was "becoming somewhat overwhelming."

Analysis

Petitioner argues that his "plea was not knowingly, voluntarily and intelligently made because of the ineffective assistance of counsel." He claims that trial counsel "made numerous errors and was often reprimanded in front of the jury. [Petitioner]

witnessed the jury's reaction to counsel's ineffective assistance and believed that because of it he would be found guilty." We disagree.

To obtain post-conviction relief, a petitioner must prove that his or her conviction or sentence is void or voidable because of the abridgement of a right guaranteed by the United States Constitution or the Tennessee Constitution. T.C.A. § 40-30-103; *Howell v. State*, 151 S.W.3d 450, 460 (Tenn. 2004). A post-conviction petitioner bears the burden of proving his or her allegations of fact by clear and convincing evidence. T.C.A. § 40-30-110(f); *Dellinger v. State*, 279 S.W.3d 282, 293-94 (Tenn. 2009). "Evidence is clear and convincing when there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009) (quoting *Hicks v. State*, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998)). In an appeal of a court's decision resolving a petition for post-conviction relief, the court's findings of fact "will not be disturbed unless the evidence contained in the record preponderates against them." *Frazier v. State*, 303 S.W.3d 674, 679 (Tenn. 2010).

A criminal petitioner has a right to "reasonably effective" assistance of counsel under both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). The right to effective assistance of counsel is inherent in these provisions. *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984); *Dellinger*, 279 S.W.3d at 293. To prove ineffective assistance of counsel, a petitioner must prove both deficient performance and prejudice to the defense. *Strickland*, 466 U.S. at 687. Failure to satisfy either prong results in the denial of relief. *Id.* at 697.

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, 370 (Tenn. 1996) (citing *Strickland*, 466 U.S. at 688; *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975)). Moreover, 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. In the context of a guilty plea, the petitioner must show a reasonable probability that were it not for the deficiencies in counsel's representation, he or she would not have pled guilty but would instead have insisted on proceeding to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *House v. State*, 44 S.W.3d 508, 516 (Tenn. 2001).

Concerning the post-conviction petition in the present case, the trial court found:

> The Petitioner bears the burden of proving his allegations by "clear and convincing" evidence T.C.A. § 40-30-110(f). In the case at hand, Petitioner argues that he entered a guilty plea because of the performance of his attorney.
>
> The record establishes that Petitioner's attorney was knowledgeable about the case against his client, had a defense strategy and was actively engaged in the presentation of that strategy at a jury trial.
>
> An examination of Exhibit I reveals that Petitioner entered a knowing and voluntary guilty plea. He has failed to prove that his attorney was deficient or that his attorney's performance prejudiced the outcome of the proceedings. *Strickland vs. Washington*, 466 U.S. 668, 687 (1984).

Petitioner in this case did not prove his allegations by clear and convincing evidence nor has he shown prejudice by any alleged deficiencies in trial counsel's performance.

Petitioner contends that "trial counsel's inexperience was on display for the jury with his misunderstanding of what is allowed in opening statements and then with his questionable objections." However, he does not specifically state how trial counsel's performance was deficient in this area. Petitioner does not point to any specific instances of misunderstanding in trial counsel's opening statement nor does he point out which objections by trial counsel were improper other than to reference some pages from the trial transcript. At the post-conviction hearing, trial counsel agreed that the trial court "probably" interrupted his opening statement and told him not to argue the case. He said: "Then I think, I probably, I probably disagreed as to whether I was arguing but I did comply with it." The post-conviction court then noted that many attorneys make an argument during opening statement. Petitioner has not shown that trial counsel's performance was deficient in this area or how trial counsel's performance prejudiced his case.

Petitioner further argues that trial counsel allowed the State to "introduce the fact that a separate police agency verified his identity despite the fact that this had been suppressed prior to trial." Petitioner states that identity was the "only real question at issue[,]" and the "corroborating evidence was introduced for no other reason than because counsel wanted to find answers to questions that he did not already know the answer to." Petitioner contends that trial counsel's tactical decision to ask questions

about the Dallas DEA "amounted to an admission by the witness that [Petitioner] along with most of his co-defendants, was indicted through the grand jury rather than arrested and processed through general sessions." He also complains that trial counsel never asked the witness how the Dallas DEA was able to identify Petitioner and that trial counsel's point in asking about the Dallas DEA seemed "to be that if they knew [Petitioner] was involved they should have arrested him." Petitioner argues that the State then asked the witness questions about how the Dallas DEA was able to identify Petitioner. Petitioner states that trial counsel "attempted to ask questions about the identification on his re-cross but they were confusing and frequently interrupted by sustained objections."

However, trial counsel testified that he opened the door and questioned the detective about the Dallas DEA for tactical reasons because he felt that the "evidence was being painted a certain way." Trial counsel agreed that he asked Detective Overly questions about the Dallas DEA that he did not know the answer to. He further testified:

> I knew that there was an issue with the discovery. I don't specifically recall, I might have to look at what you're talking about in the transcript. But I do know that was an issue. I wanted to know, I believe we wanted some kind of answers specifically as to how the Dallas DEA corroborated his identity and those numbers. I think that's why, why I had originally opened, opened that door.

Trial counsel did not believe that Detective Overly satisfactorily answered the question as to how the Dallas DEA identified Petitioner.

At trial, on redirect examination by the State, Detective Overly testified that the Dallas DEA aided in the research and identification of the user of a particular phone number. Detective Overly further testified that the Dallas DEA's research of the phone number corroborated their identification of the phone number as belonging to Petitioner. Trial counsel made a strategic decision concerning this issue. This Court has stated that, "[w]hen reviewing trial counsel's actions, this court should not use the benefit of hindsight to second-guess trial strategy and criticize counsel's tactics." *Irick v. State*, 973 S.W.2d 643, 652 (Tenn. Crim. App. 1998). In addition to the phone records, there was other evidence of Petitioner's guilt presented during the State's proof.

Even if trial counsel's performance in this area was deficient, Petitioner has not shown any prejudice. At the guilty plea submission hearing, the trial judge explained all of Petitioner's rights to him, and Petitioner told the trial court that he was entering the plea freely and voluntarily. When given the opportunity to ask questions Petitioner said that he had "just one question." He said: "I mean, it's not about what I'm doing but it's

like before the trial even started, I was under the impression that we were going to interlock [sic] appeal, that I could not interlock [sic] appeal unless I took it to trial." The trial court then told Petitioner that "you can ask for one but only in very rare cases is there an interlocutory appeal." The trial court noted that if Petitioner had gone to trial and been convicted, the issue that he "wanted to preserve would be automatically appealed." Petitioner then asked about appealing an issue on the suppression hearing. The trial court said:

> No. And there that's part of this guilty plea, you're giving up, you know, you know that appeal issue on it. If you want to appeal that, you have to go through the trial. And if you get convicted, that will be part of your appeal.
>
> Of course, again, you will be, if you were convicted, you'd be doing between twenty-five and forty, if you were convicted as charged, you'd be doing twenty-five to forty years while you appealed it. And that's why I'm saying, sometimes these are, these pleas you enter make the best of a bad situation.

Petitioner told the trial court that all of his questions had been answered and that it was his decision to plead guilty. Petitioner again told the trial court that he had no further questions. He did not mention anything about feeling forced to plead guilty or that trial counsel had rendered ineffective assistance.

The post-conviction court made the following conclusions:

> The Petitioner bears the burden of proving his allegations by "clear and convincing" evidence. T.C.A. § 40-30-110 (f). In the case at hand, Petitioner argues that he entered a guilty plea because of the performance of his attorney.
>
> The record establishes that Petitioner's attorney was knowledgeable about the case against his client, had a defense strategy and was actively engaged in the presentation of the strategy at a jury trial.
>
> An examination of Exhibit I reveals that Petitioner entered a knowing and voluntary guilty plea. He has failed to prove that his attorney was deficient or that his attorney's performance prejudiced the outcome of the proceeding. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

We agree with the post-conviction court that Petitioner has failed to demonstrate that but for trial counsel's alleged deficiencies, he would have refused to plead guilty and insisted on going to trial. Concerning trial counsel's preparation for the case, Mr. Hagerman testified that trial counsel "demonstrated excellent awareness of, you know, facts that he was going to use in his defense and things." Mr. Hagerman and trial counsel discussed the State's case and trial counsel would ask questions about it. He filed motions trying to suppress certain evidence. Mr. Hagerman specifically testified that trial counsel was very familiar with the case. Mr. Hagerman further testified that on the day of trial, trial counsel was well acquainted with the facts of the case and the State's theory because they had talked about it numerous times. He specifically stated that trial counsel was "familiar and ready." Mr. Hagerman testified that based on the proof presented by the State after the trial began, the proof against Petitioner was "becoming somewhat overwhelming."

As pointed out by the State, Petitioner pled guilty once he saw the evidence against him to obtain a more favorable sentence than he would have received if convicted at trial. After reviewing the record, Petitioner has failed to show that he received ineffective assistance of counsel or that his guilty plea was not knowingly, voluntarily, and intelligently made. Accordingly, Petitioner is not entitled to post-conviction relief.

CONCLUSION

Accordingly, the judgment of the post-conviction court is affirmed.

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THOMAS T. WOODALL, JUDGE