

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 7, 2019 at Jackson

FILED

07/12/2019

Clerk of the
Appellate Courts

MAURICE MCALLISTER v. STATE OF TENNESSEE

Appeal from the Circuit Court for Giles County
No. CR-13140 Stella L. Hargrove, Judge

No. M2018-01430-CCA-R3-PC

The petitioner, Maurice McAllister, appeals the denial of his petition for post-conviction relief, which petition challenged his 2013 conviction of rape, alleging that he was deprived of the effective assistance of counsel. Discerning no error, we affirm the denial of post-conviction relief.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which THOMAS T. WOODALL, and D. KELLY THOMAS, JR., JJ., joined.

Stacie L. Odeneal, Lawrenceburg, Tennessee, for the appellant, Maurice McAllister.

Herbert H. Slatery III, Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Brent Cooper, District Attorney General; and Victoria Haywood, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In 2012, the Giles County Grand Jury charged the petitioner with 13 counts of rape and one count of aggravated rape arising from accusations made “by a group of young Amish people.” *State v. Maurice McAllister*, No. M2014-02022-CCA-R3-CD, slip op. at 1 (Tenn. Crim. App., Nashville, Dec. 16, 2015), *perm. app. denied* (Tenn. Apr. 6, 2016). The aggravated rape charge was severed from the other charges, and the petitioner proceeded to trial on the aggravated rape charge. *Id.*, slip op. at 1-2. The State’s evidence at trial established that the victim and other Amish girls worked for the petitioner and his wife helping with “weeding, painting, raking leaves, and working in the flower beds.” *Id.*, slip op. at 7. On the victim’s sixteenth birthday, the petitioner approached her in the “wash-house” at her home and “reached on [her] breast,” “masturbate[ed] in front of her,” and “put his finger in her vagina.” *Id.*, slip op. at 7-8

(first alteration in original). The petitioner had previously shown the victim a pistol, and, during the incident in the wash-house, he “threatened to shoot her with it” if she told anyone of his conduct. *Id.*, slip op. at 8. In a separate incident, the petitioner instructed the victim to “cut some of her pubic hair and give to him.” *Id.*, slip op. at 8. During a recorded interview with law enforcement officers, the petitioner admitted to touching the victim’s breasts and placing his finger in her vagina but repeatedly denied having threatened her. *Id.*, slip op. at 6.

The jury convicted the petitioner of the lesser included offense of rape, and the trial court imposed a sentence of 12 years’ incarceration. *Id.*, slip op. at 9. This court affirmed the petitioner’s conviction and sentence on direct appeal. *Id.*, slip op. at 16-17.

The petitioner filed a timely pro se petition for post-conviction relief and, after the appointment of counsel, filed an amended petition, alleging the ineffective assistance of the petitioner’s trial counsel. In his pro se petition, the petitioner alleged that trial counsel performed deficiently by failing to preserve certain issues for appeal, failing to pursue a plea agreement, failing to argue mitigating evidence, failing to object to the jury instructions, failing to request the dismissal of certain jurors for cause, failing to seek a change in venue, failing to object to certain enhancement factors at sentencing, and failing to ensure that the trial court made explicit findings in sentencing the petitioner. In his amended petition, however, the petitioner makes only a general claim of his trial counsel’s deficient performance and does not allege any specific facts supporting his claim.

At the July 13, 2018 evidentiary hearing, the petitioner testified that he hoped to “get some relief” from the post-conviction court; specifically, he wanted “[s]ome time off of [his] sentence.” He cited his good behavior during incarceration as a reason for his deserving post-conviction relief. He stated that he did not think “that anything went wrong with the trial at all,” and he repeatedly stated that trial counsel provided proper representation. He also stated that his post-conviction counsel did not provide “proper representation,” which complaint stemmed primarily from a lack of correspondence. When asked whether trial counsel “did exactly what he was supposed to do,” the petitioner responded, “Yes.”

On cross-examination, the petitioner identified his signature on the post-conviction petition and acknowledged filing it. He acknowledged that he did not raise any claims as to post-conviction counsel’s representation in his pro se petition. Upon questioning by the court, the petitioner stated that he did not know why he was in court that day and that he was not notified of the scheduled hearing until he was awoken that day at 5:30 a.m. and told to get ready for court.

At the close of the petitioner's evidence, the State moved to dismiss the post-conviction petition for lack of evidence of trial counsel's deficient performance, which motion the post-conviction court granted. In its written order denying relief, the post-conviction court found that the petitioner "repeatedly denied that he had any issues with [trial counsel's] representation" and that the petitioner believed that trial counsel had provided "proper representation." The court found that the petitioner was physically and mentally sound at the evidentiary hearing and "merely wanted to complain about the two attorneys appointed to assist him with a [post-conviction] petition that obviously someone at the penitentiary prepared for him." The court also found that the petitioner's pro se and amended petitions for post-conviction relief failed to allege any specific facts of trial counsel's deficient performance. The court concluded that there was no evidence of ineffective assistance of counsel and denied relief.

In this timely appeal, the petitioner argues that the post-conviction court erred by granting the State's motion to dismiss the petition without making any findings of fact. The petitioner also reasserts a general claim of ineffective assistance of trial counsel but fails to put forth any facts supporting his claim.

We view the petitioner's claim with a few well-settled principles in mind. 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.

When considering a claim of ineffective assistance of counsel, a reviewing court “begins with the strong presumption that counsel provided adequate assistance and used reasonable professional judgment to make all significant decisions,” *Kendrick v. State*, 454 S.W.3d 450, 458 (Tenn. 2015) (citation omitted), and “[t]he petitioner bears the burden of overcoming this presumption,” *id.* (citations omitted). We will not grant the petitioner the benefit of hindsight, second-guess a reasonably based trial strategy, or provide relief on the basis of a sound, but unsuccessful, tactical decision made during the course of the proceedings. *Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994). Such deference to the tactical decisions of counsel, however, applies only if the choices are made after adequate preparation for the case. *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992).

Here, the petitioner has failed to carry his burden to prove by clear and convincing evidence sufficient facts to support his claim that trial counsel’s representation was deficient. The petitioner did not present any evidence at the post-conviction hearing to support such a conclusion. Additionally, the petitioner’s claim that the post-conviction court erred by granting the State’s motion to dismiss without making findings of fact is simply without merit. The post-conviction court’s written order denying relief includes specific findings of fact based upon the sparse evidence presented at the evidentiary hearing.

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

JAMES CURWOOD WITT, JR., JUDGE