

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs February 6, 2018

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NORMA BARNETT v. STATE OF TENNESSEE

Appeal from the Circuit Court for Madison County
No. C-17-133 Roy B. Morgan, Jr., Judge

No. W2017-01521-CCA-R3-PC

The Petitioner, Norma Barnett, appeals from the denial of post-conviction relief by the Madison County Circuit Court. In this appeal, she argues that she received ineffective assistance of counsel and that her guilty plea was involuntary and unknowing. Upon our review, we affirm the judgment of the post-conviction court.

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

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and J. ROSS DYER, JJ., joined.

Joshua B. Dougan, Jackson, Tennessee, for the appellant, Norma Barnett.

Herbert H. Slatery III, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Jody Pickens, District Attorney General; and Al Earls, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Petitioner was indicted by the Madison County Grand Jury on charges of second degree murder and tampering with evidence. The Petitioner eventually pleaded guilty to a reduced charge of voluntary manslaughter and tampering with evidence. As a condition of the plea agreement, the Petitioner was to receive a fifteen-year sentence with a forty-five percent release eligibility date. This release eligibility date is outside the sentencing range for a Range I sentence at thirty percent.

Guilty Plea Hearing. At the September 28, 2016 guilty plea hearing, the State summarized the underlying facts as follows: “On or about [January 3, 2016], [[the Petitioner] did kill Melvin Henning by stabbing him in the chest with a large butcher knife. After that, she wiped the blood off the knife and put it in a drawer.” At the

hearing, the Petitioner testified that she had signed a plea agreement. Per the plea agreement, the Petitioner would plead guilty to voluntary manslaughter and tampering with evidence to be served at a forty-five percent release eligibility range.

When asked if she understood the agreement, the Petitioner testified “yes, sir.” The court ensured the Petitioner understood that by entering the guilty plea, she was agreeing to be sentenced outside the usual thirty percent release eligibility range for voluntary manslaughter. Specifically, the court told the Petitioner that “release eligibility [was] how much of a sentence [she] ha[d] to serve before [she] [was] eligible for release, such as th[e] [forty-five] percent in [her] case, but [that] it[] [was] not automatic release, it[] [was] just when [she] [was] first eligible for release.” The Petitioner testified she understood the plea agreement terms and had no questions.

When asked if she was satisfied with trial counsel’s work on her case, the Petitioner testified she was not satisfied, and she felt as if trial counsel had not acted in her best interest. However, when asked about specific issues, the Petitioner stated none. After the court gave her several opportunities to express specific issues about trial counsel or the plea, the Petitioner eventually said she was satisfied and wanted to proceed with the guilty plea. The court accepted the Petitioner’s plea and as a result, the Petitioner was sentenced to fifteen years’ imprisonment to be served at a forty-five percent release eligibility range.

Several months after sentencing, the Petitioner filed a petition for post-conviction relief. In her petition, she first asserted that her guilty plea was entered involuntarily without a clear understanding of the consequences. Secondly, the Petitioner asserted that she received ineffective assistance of counsel. Specifically, the Petitioner alleged that trial counsel was ineffective by “coercing [the] Petitioner into accepting [a] plea agreement that was not in her best interest”

Post-Conviction Hearing. At the July 10, 2017 hearing on post-conviction relief, the Petitioner testified that at the time she entered the guilty plea, she understood “none of it.” She stated that while she had previously been arrested, she had never been charged with a felony or involved with Circuit Court proceedings before. Although she agreed to the forty-five percent release eligibility range, she did not know what pleading “outside of range” necessarily meant. Based upon trial counsel’s assurances, she signed the plea “with the understanding of [her] not having prior charges, that [she] would go to prison and be released on good behavior, like six months or whatever.” The Petitioner believed trial counsel did not adequately communicate with her, and claimed they had never met outside of the courtroom to discuss the case. She testified trial counsel never discussed the possibility of going to trial, self-defense, or battered woman syndrome. The Petitioner felt intimidated during the plea hearing.

On cross-examination, the Petitioner expressed some dissatisfaction with trial counsel, but could not recall anything in particular. She also admitted that she could have addressed issues about trial counsel at the guilty plea hearing, but chose not to and continued with the plea agreement. The Petitioner admitted she never attempted to visit or call trial counsel at his office while out on bail.

Trial counsel, a veteran lawyer with over seventy-five percent of his practice devoted to criminal work, testified he reviewed the district attorney's files, spoke with the Petitioner, and obtained a mental evaluation of the Petitioner from a local psychologist. He discussed the case with the Petitioner, explored possible defenses, and met with the Petitioner for "a long time at the jail." Trial counsel contradicted the Petitioner's allegations that she did not understand the plea and stated both he and the court adequately explained the terms of the plea agreement to the Petitioner.

On cross-examination, trial counsel admitted while he had never met with the Petitioner in his office, he had set three or four appointments with the Petitioner, but she failed to appear at any. He testified while consultations that take place in court are not usually sufficient to discuss a case, he had discussed the case and possible defenses with the Petitioner during court and during a visit to jail.

At the conclusion of the post-conviction hearing, the court denied the Petitioner's request for relief. In a written order issued by the post-conviction court, the court found the Petitioner made no effort to contact trial counsel while out on bail, failed to keep appointments to discuss her case, and failed to raise specific issues about the case and trial counsel during her plea hearing. The court found that while the Petitioner asserted she did not understand the nature of the charges or the plea agreement, trial counsel thoroughly explained all the details of the case and plea agreement with the Petitioner. The court denied the Petitioner's relief and stated trial counsel was "not ineffective in any manner" and "performed well within the guidelines as required of attorneys in these type cases."

It is from this written order that the Petitioner now appeals.

ANALYSIS

On appeal, the Petitioner asserts that she received ineffective assistance of counsel and as a result, her guilty plea was involuntarily and unknowingly entered. Specifically, the Petitioner argues that trial counsel failed to "expend the necessary time and effort to ensure that she understood the ramifications of her plea agreement." The State responds that the Petitioner's argument is without merit, and she is entitled to no relief because the

Petitioner has failed to establish either deficient performance or prejudice on behalf of trial counsel. Upon review, we agree with the State.

In reaching our conclusion, we are guided by the following well-established law pertaining to post-conviction relief. Post-conviction relief is only warranted when a petitioner establishes that his or her conviction or sentence is void or voidable because of an abridgement of a constitutional right. T.C.A. § 40-30-103. The Tennessee Supreme Court has held:

A post-conviction court's findings of fact are conclusive on appeal unless the evidence preponderates otherwise. When reviewing factual issues, the appellate court will not re-weigh or re-evaluate the evidence; moreover, factual questions involving the credibility of witnesses or the weight of their testimony are matters for the trial court to resolve.

Vaughn v. State, 202 S.W.3d 106, 115 (Tenn. 2006) (citations and internal quotation marks omitted); see Felts v. State, 354 S.W.3d 266, 276 (Tenn. 2011); Frazier v. State, 303 S.W.3d 674, 679 (Tenn. 2010). A post-conviction petitioner has the burden of proving the factual allegations by clear and convincing evidence. T.C.A. § 40-30-110(f); Tenn. Sup. Ct. R. 28, § 8(D)(1); Dellinger v. State, 279 S.W.3d 282, 293-94 (Tenn. 2009). Evidence is considered clear and convincing when there is no serious or substantial doubt about the accuracy of the conclusions drawn from it. Lane v. State, 316 S.W.3d 555, 562 (Tenn. 2010); Grindstaff v. State, 297 S.W.3d 208, 216 (Tenn. 2009); Hicks v. State, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998).

I. Ineffective Assistance. In order to prevail on an ineffective assistance of counsel claim, the petitioner must establish that (1) his lawyer's performance was deficient and (2) the deficient performance prejudiced the defense. Felts, 354 S.W.3d at 276 (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). “[A] failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim” and “a court need not address the components in any particular order or even address both if the [petitioner] makes an insufficient showing of one component.” Goad v. State, 938 S.W.2d 363, 370 (Tenn. 1996) (citing Strickland, 466 U.S. at 697). This court reviews a claim of ineffective assistance of counsel, which is a mixed question of law and fact, under a de novo standard with no presumption of correctness. Smith v. State, 357 S.W.3d 322, 336 (Tenn. 2011).

A petitioner successfully demonstrates deficient performance when the clear and convincing evidence establishes that his attorney's conduct fell below “an objective

standard of reasonableness under prevailing professional norms.” Goad, 938 S.W.2d at 369 (citing Strickland, 466 U.S. at 688; Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975)). Prejudice arising therefrom is demonstrated once the petitioner establishes “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 370 (quoting Strickland, 466 U.S. at 694). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. The petitioner must show that “counsel’s deficient performance was of such a degree that it deprived him of a fair trial and called into question the reliability of the outcome.” Mobley v. State, 397 S.W.3d 70, 81 (Tenn. 2013) (citation and internal quotation marks omitted). A reasonable probability of being found guilty of a lesser charge satisfies the prejudice prong. Id.

We note that “[i]n evaluating an attorney’s performance, a reviewing court must be highly deferential and should indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” State v. Burns, 6 S.W.3d 453, 462 (Tenn. 1999) (citing Strickland, 466 U.S. at 689). Moreover, “[n]o particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” Strickland, 466 U.S. at 688-89. However, we note that this “deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation.” House v. State, 44 S.W.3d 508, 515 (Tenn. 2001) (quoting Goad, 938 S.W.2d at 369).

The Petitioner first argues that trial counsel was ineffective because he did not take the necessary time and effort to ensure that the Petitioner knew and understood the terms of her plea agreement. The Petitioner further asserts that trial counsel had no meaningful conversations with her beyond brief in-court interaction. However, at the post-conviction hearing, trial counsel testified he had spoken to the Petitioner about the case and possible defenses on two separate occasions, once while in court and again during a long visit to the jail. Further, trial counsel testified in order to prepare for the case, he reviewed the district attorney’s files, spoke with the Petitioner, and obtained a mental evaluation of the Petitioner from a local psychologist.

The Petitioner testified while she felt general dissatisfaction with trial counsel, she could not recall any specific issues. During the guilty plea hearing, the Petitioner was given multiple opportunities by the court to address concerns about trial counsel and the plea agreement, but the Petitioner chose not to and continued with the plea. The Petitioner confirmed at the post-conviction hearing she never attempted to visit or call trial counsel about her case and trial counsel testified he had set several appointments with the Petitioner and she failed to appear at any.

The post-conviction court accredited trial counsel's testimony and we do not review a post-conviction court's determination of a witness's credibility. See Vaughn, 202 S.W.3d at 115. Furthermore, the Petitioner was unable to present any specific facts to the court of trial counsel's ineffectiveness. The record fully supports the post-conviction court's findings that trial counsel acted appropriately under the circumstances. The Petitioner was given ample opportunities to produce information concerning trial counsel and failed to do so. For these reasons, the Petitioner is not entitled to relief.

II. Guilty Plea. Secondly, the Petitioner argues that because trial counsel failed to explain the plea terms to her, she entered into the plea understanding "none of it." The Petitioner asserts that her hesitance to enter into the plea reinforced trial counsel's duty to ensure that she understood the terms. Further, the Petitioner argues that at the time she entered into the plea, she felt intimidated.

The validity of a guilty plea is a mixed question of law and fact that is reviewed de novo. Lane v. State, 316 S.W.3d 555, 562 (Tenn. 2010). To be valid, a guilty plea must be entered knowingly, voluntarily, and intelligently. Id. (citing State v. Mackey, 553 S.W.2d 337, 340 (Tenn. 1977), superseded on other grounds by rules as stated in State v. Wilson, 31 S.W.3d 189, 193 (Tenn. 2000); North Carolina v. Alford, 400 U.S. 25, 31 (1970); Brady v. United States, 397 U.S. 742, 747 (1970); Boykin v. Alabama, 395 U.S. 238, 242–44 (1969)). "[T]he record of acceptance of a defendant's plea of guilty must affirmatively demonstrate that his decision was both voluntary and knowledgeable, i.e., that he has been made aware of the significant consequences of such a plea[.]" Mackey, 553 S.W.2d at 340; see Tenn. R. Crim. P. 11(b)(1). When determining whether a guilty plea was knowingly, voluntarily, and intelligently entered, the court must consider "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Lane, 316 S.W.3d at 562 (quoting Grindstaff v. State, 297 S.W.3d 208, 218 (Tenn. 2009)). If a guilty plea is not knowingly, voluntarily, and intelligently entered, then the defendant has been denied due process, and the guilty plea is void. Id. (citations omitted).

A plea is not voluntary if it is the result of "[i]gnorance, incomprehension, coercion, terror, inducements, [or] subtle or blatant threats." Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993) (quoting Boykin, 395 U.S. at 242–43). In determining whether a guilty plea is voluntarily and intelligently entered, a trial court must look at a number of factors, which include the following:

- 1) the defendant's relative intelligence; 2) the defendant's familiarity with criminal proceedings; 3) the competency of counsel and the defendant's opportunity to confer with counsel about alternatives; 4) the advice of counsel and the court about the charges and the penalty to be imposed; and

5) the defendant's reasons for pleading guilty, including the desire to avoid a greater penalty in a jury trial.

Howell v. State, 185 S.W.3d 319, 330–31 (Tenn. 2006) (citing Blankenship, 858 S.W.2d at 904).

We have already established that trial counsel did not provide ineffective assistance of counsel to the Petitioner in this case. Thus, we reject the Petitioner's claim that her guilty plea was involuntarily and unknowingly entered based on trial counsel's alleged ineffective assistance. Trial counsel testified he had discussed the terms of the agreement with the Petitioner and met with her on two separate occasions. At the guilty plea hearing, the trial court informed the Petitioner of all of her rights and asked her if she understood the terms of the agreement. Specifically, the trial court explained release eligibility and what pleading outside of the Petitioner's sentencing range meant. The Petitioner repeatedly stated she understood the terms and discussed them thoroughly with her attorney. Again, the post-conviction court accredited trial counsel's testimony. As a result, the post-conviction court found, and we agree, that the Petitioner knowingly and voluntarily entered her guilty plea. Mackey, 553 S.W.2d at 340; see Tenn. R. Crim. P. 11(b)(1).

CONCLUSION

Based upon the foregoing reasoning and analysis, the judgment of the post-conviction court is affirmed.

CAMILLE R. MCMULLEN, JUDGE