

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs February 5, 2014

CLINT SIMS v. STATE OF TENNESSEE

Appeal from the Circuit Court for Madison County
No. C12-246 Donald H. Allen, Judge

No. W2013-01708-CCA-R3-PC - Filed May 15, 2014

The petitioner, Clint Sims, appeals the denial of his petition for post-conviction relief, arguing that both his waiver of appointed counsel and his *pro se* guilty pleas were unknowing due to his mental health issues and the conditions he endured at the jail. Following our review, we affirm the judgment of the post-conviction court denying the petition.

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

ALAN E. GLENN, J., delivered the opinion of the Court, in which JOHN EVERETT WILLIAMS and CAMILLE R. MCMULLEN, JJ., joined.

Angela Jenkins-Hines, Jackson, Tennessee, for the appellant, Clint Sims.

Robert E. Cooper, Jr., Attorney General and Reporter; Caitlin E.D. Smith, Assistant Attorney General; James G. Woodall, District Attorney General; and James W. Thompson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On August 6, 2012, the petitioner, having waived his right to counsel, pled guilty in the Madison County Circuit Court to vandalism over \$1000, a Class D felony, and two counts of assault, a Class A misdemeanor, in exchange for a Range II, multiple offender sentence of eight years at 35% for the felony vandalism conviction and eleven months, twenty-nine days at 75% for each of the misdemeanor assault convictions, with all the sentences to run concurrently. The petitioner admitted his guilt of the offenses, explaining that one of his assault charges was based on a female correctional officer's having fallen and injured herself after running from his cell under the belief that he was about to throw his

urine on her, another assault charge was based on his having thrown urine on an inmate trusty, and the vandalism charge was based on his having damaged two cameras and “a couple of sprinkler heads” in the jail’s water sprinkler system.

On September 24, 2012, the petitioner filed both a *pro se* petition for post-conviction relief and a *pro se* motion to reopen his post-conviction petition, claiming that he was entitled to post-conviction relief because he was unrepresented by competent counsel at his guilty plea hearing and had not been taking his required “psych-medications” for the four and a half months prior to the hearing, which prevented him from entering knowing, understanding, or voluntary guilty pleas. Following the appointment of post-conviction counsel, the petitioner filed an amended petition for post-conviction relief in which he alleged that his pleas were involuntary and unknowing because both the pleas and his waiver of his right to counsel were “taken as a product of ignorance and misunderstanding.”

At the evidentiary hearing, the petitioner testified that he had been diagnosed with paranoid schizophrenia and bipolar disorder at the age of nineteen and had not been given his psychiatric medication for approximately five months before he entered his pleas. He also claimed that, during that time, he was kept in a holding cell in which the lights were constantly on and he was denied access to any sort of recreational activity. He described the conditions he endured as “cruel and unusual punishment” and said that, during his time in the holding cell, he played with his own feces, had to be hospitalized for cutting himself, and was placed on suicide watch on several occasions. He testified that he did not understand what he was doing in waiving his right to counsel and pleading guilty to the offenses and “just wanted to get out of that cell.” He claimed, in fact, that he would have pled to “anything that [he] could do to get out of that cell.” Had he been on his medication and in his right mind, he would have asked for an attorney to either help him negotiate a better plea or take the case to trial.

The petitioner acknowledged that both the prosecutor and the trial court reviewed with him the rights he was waiving by electing to proceed *pro se* and by pleading guilty to the offenses. He further acknowledged that he signed both the waiver of the right to counsel and the waiver of rights and petition to plead guilty forms, although he said he had no memory of having done so. He also conceded that he repeatedly informed the trial court that he understood what he was doing and wanted to proceed without counsel and to plead guilty to the offenses in exchange for the agreed sentence. He insisted, however, that his mental illnesses and distress at his jail conditions prevented him from understanding what he was doing. He testified that he had gone through the eighth grade and obtained his GED but that he was not skilled in the law.

Upon questioning by the post-conviction court, the petitioner acknowledged that he told the court during his plea colloquy that no one had coerced or pressured him into entering his pleas. He said he replied that way because there was not one single person who had coerced him, but instead the entire situation he endured. He complained that the eight-year sentence for vandalism was unfair because the damage he caused was not that severe and said he believed a two-year probationary sentence would have been more appropriate. He conceded that he never informed the trial court that he was not thinking clearly at the time he entered his pleas. He also acknowledged that he had pled guilty on three prior occasions and was familiar with the rights he was waiving in pleading guilty. He pointed out, however, that he was represented by counsel at those prior guilty plea hearings. Finally, he testified that every time he told the trial court during his plea colloquy that he understood his rights and what he was doing, he was not telling the truth.

On July 10, 2013, the post-conviction court entered a detailed order finding that the petitioner had failed to meet his burden of demonstrating that he was entitled to post-conviction relief. Among other things, the court credited the petitioner's testimony during the plea colloquy, finding not credible the petitioner's post-conviction evidentiary hearing testimony that he was mentally incompetent and did not understand what he was doing at the time he waived counsel and entered his pleas. The court found that the petitioner was "fully advised of and clearly understood all of his constitutional rights and that he freely, knowingly and voluntarily waived his right to court appointed counsel and expressed his desire to proceed Pro Se." The court further found that there was no evidence that the petitioner's decision to plead guilty was the result of any force or coercion, but rather that his decision to enter the pleas was "made freely, voluntarily, knowingly and intelligently." Accordingly, the court denied the petition. This appeal followed.

ANALYSIS

The petitioner contends that the fact that he was not appointed counsel and was not taking his prescribed medication at the time he entered his pleas rendered the pleas unknowing and involuntary. He claims that he was "not granted his right to counsel under Strickland v. Washington" and asserts that competent counsel would have, among other things, advised him of the plea ranges, given him learned advice on how to proceed if he was unable to obtain a favorable plea bargain, and made the court aware that he was not receiving his prescribed medication. According to his argument, both his waiver of appointed counsel and his *pro se* entry of his guilty pleas were the product of his mental illness and physical duress, entitling him to post-conviction relief. The State argues that the post-conviction court properly denied the petition after finding that the petitioner knowingly and voluntarily waived his right to counsel and made a voluntary and intelligent decision to plead guilty to the offenses. We agree with the State.

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 (2012). The petitioner bears the burden of proving factual allegations by clear and convincing evidence. Id. § 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).

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). 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 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).

As for the petitioner's claim that he was “not granted his right of counsel under Strickland v. Washington,” we note that “when a defendant forfeits or waives the right to counsel, regardless of whether the waiver is explicit or implicit, he or she also forfeits or waives the right to effective assistance of counsel.” State v. Carruthers, 35 S.W.3d 516, 551 (Tenn. 2000); see also State v. Small, 988 S.W.2d 671, 673 (Tenn. 1999) (“One who knowingly and intelligently waives the right to counsel cannot later allege the deprivation of effective assistance of counsel.”); State v. Goodwin, 909 S.W.2d 35, 45 (Tenn. Crim. App. 1995) (“The Defendant waived his sixth amendment right to counsel when he chose to represent himself. He cannot now argue that he was deprived of effective assistance of counsel.”).

In order to activate the right of self-representation, the defendant must: (1) timely assert the right to proceed *pro se*; (2) clearly and unequivocally exercise the right; and (3) knowingly and intelligently waive his or her right to assistance of counsel. State v. Herrod, 754 S.W.2d 627, 629-30 (Tenn. Crim. App. 1988). In determining whether a defendant intelligently and knowingly waived his right to counsel, the trial court must question the defendant extensively regarding his ability to represent himself. State v. Northington, 667 S.W.2d 57, 61 (Tenn. 1984); Herrod, 754 S.W.2d at 630. A defendant need not have “technical legal knowledge” in order to exercise his right of self-representation. Faretta v. California, 422 U.S. 806, 836 (1975).

The transcript of the guilty plea hearing reflects that the trial court questioned the petitioner at great length to ensure that he understood exactly what he was doing in waiving his right to counsel and electing to proceed *pro se*. The record also reflects that the petitioner was clear and unequivocal in expressing his desire to do so, assuring the court that he was not under the influence of any drugs or medication that might impair his judgment and that he understood the constitutional rights he was waiving, the offenses with which he had been charged, the range of punishments involved, and the sentences he would receive by pleading guilty. We conclude, therefore, that the record supports the post-conviction court’s finding that the petitioner knowingly and intelligently waived his right to the assistance of counsel. The petitioner cannot, thus, now complain that he was deprived of the effective assistance of counsel when negotiating and entering his pleas.

We further conclude that the record supports the post-conviction court’s findings that the petitioner knowingly, voluntarily, and intelligently entered his guilty pleas to the offenses. Before a guilty plea may be accepted, there must be an affirmative showing in the trial court that it was voluntarily and knowingly entered. Boykin v. Alabama, 395 U.S. 238, 242 (1969); State v. Mackey, 553 S.W.2d 337, 340 (Tenn. 1977). This requires a showing that the defendant was made aware of the significant consequences of the plea. State v. Pettus, 986 S.W.2d 540, 542 (Tenn. 1999) (citing Mackey, 553 S.W.2d at 340). A plea is not “voluntary” if it results from ignorance, misunderstanding, coercion, inducements, or threats. Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993). The trial court must determine if the guilty plea is “knowing” by questioning the defendant to make sure he or she fully understands the plea and its consequences. Pettus, 986 S.W.2d at 542; Blankenship, 858 S.W.2d at 904.

Because the plea must represent a voluntary and intelligent choice among the alternatives available to the defendant, the trial court may look at a number of circumstantial factors in making this determination. Blankenship, 858 S.W.2d at 904. These factors include: (1) the defendant’s relative intelligence; (2) the defendant’s familiarity with criminal proceedings; (3) whether the defendant was represented by competent counsel and had the

opportunity to confer with counsel about alternatives; (4) the advice of counsel and the court about the charges against the defendant 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. Id. at 904-05.

The transcript of the guilty plea hearing, again, reflects that the trial court informed the petitioner at great length of the rights he was waiving by pleading guilty, the charges against him, the ranges of punishment, and the sentences he would receive. The petitioner initially expressed his desire to delay one of the assault charges, informing the court that he was not guilty of assaulting the victim originally named in the indictment. However, after the State agreed to amend the victim's name to the name of the inmate trusty that the petitioner admitted to assaulting, the petitioner expressed his willingness to enter a guilty plea to that charge as well. The State offered the petitioner the Range II, eight-year sentence for the vandalism conviction, to be run concurrently to the eleven-month-twenty-nine-day sentences for the assault convictions, and the petitioner agreed to the sentence.

Throughout the hearing, the petitioner repeatedly expressed that his motivation was to have the cases settled and to be able to move to the Department of Correction to begin serving his sentences. However, the fact that he may have been motivated by a desire to be transferred out of the jail is insufficient to show that his pleas were not knowingly and understandingly entered. Throughout the colloquy, the petitioner responded appropriately to the trial court's questions and showed no signs of any confusion or lack of understanding of the proceedings. We note that at the evidentiary hearing, the petitioner testified that he has obtained his GED and entered guilty pleas on at least three other occasions. We also note that, although he attached jail medication records to his appellate brief which reflected that he had refused his medication, the only evidence he presented at the evidentiary hearing with respect to his alleged mental health issues and lack of appropriate medication was his own testimony. Documents attached to an appellate brief are not part of the record on appeal. See Best v. State, 708 S.W.2d 421, 423 (Tenn. Crim. App. 1985) (“[A]ppendices to briefs do not constitute evidence to be considered in the review of a case.”). We conclude, therefore, that the evidence does not preponderate against the post-conviction court's findings that the petitioner knowingly and intelligently waived his right to counsel and knowingly, voluntarily, and intelligently entered his guilty pleas.

CONCLUSION

We conclude that the petitioner has not shown that he is entitled to post-conviction

relief from his convictions. Accordingly, we affirm the denial of his petition for post-conviction relief.

ALAN E. GLENN, JUDGE