

IN THE
CIRCUIT COURT
MONTGOMERY COUNTY, TENNESSEE
DIVISION III

STEVIE R. DICKSON,
Petitioner

v.

STATE OF TENNESSEE,
Respondent

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Case No. 40700511

(Post-Conviction)

FILED
5/22, 2013, 10:14 A.M./P.M.
CHERYL J. CASTLE, CLERK
CIRCUIT COURT CLERK
BY: *[Signature]* D.C.

ORDER DENYING PETITION FOR POST-CONVICTION RELIEF

This matter came before the Court February 7, 2013, for a hearing on the petitioner's pro se and amended petitions for post-conviction relief. The petitioner argues that he received the ineffective assistance of counsel, and that his best interest guilty pleas were unknowing and involuntary. Having reviewed the record and the post-conviction petition, and having conducted an evidentiary hearing, the Court finds that the Petitioner is not entitled to relief and therefore denies the petition.

I. PROCEDURAL HISTORY

In May 2007 the Montgomery County Grand Jury indicted the petitioner on one count each of first degree premeditated murder, attempted first degree murder, and aggravated assault. This Court appointed Clarksville attorney John Maher to represent the petitioner in

Circuit Court.¹ On April 19, 2010, the petitioner entered best interest guilty pleas to one count each of second degree murder and attempted second degree murder. Under the terms of the agreement, the petitioner was sentenced to concurrent terms of twenty years for the second degree murder conviction and ten years for the attempted second degree murder conviction; the aggravated assault charge was dismissed. The judgments of conviction were entered April 21, 2010.

The Petitioner filed a pro se petition for post-conviction relief on April 13, 2011; thus, jurisdiction is properly before this Court. See Tenn. Code Ann. § 40-30-102(a) (2012). This Court appointed attorney Gregory Smith to represent the petitioner in these proceedings; Mr. Smith filed an amended petition November 28, 2011. An evidentiary hearing was held February 7, 2013.

Shortly after the post-conviction hearing, the petitioner filed a motion purporting to withdraw his petition for relief. The Court took no further action on the post-conviction petition pending a hearing on the petitioner's motion to withdraw the petition. At that hearing, held April 30, 2013, the petitioner indicated that he filed the motion because he was under the impression that the Court had already denied the petitioner relief. When the Court informed the petitioner that the Court had not acted on the original petition, the petitioner stated that he wished to proceed on his petition. Accordingly, the Court addresses the post-conviction petition on its merits.

¹ Jeffrey Grimes represented the petitioner during his appearances in General Sessions Court. The petitioner raises no issues regarding Mr. Grimes' representation.

II. ISSUES PRESENTED FOR REVIEW

The petitioner's chief assertion is that Mr. Maher rendered ineffective assistance of counsel at trial, and that this ineffective assistance rendered his best interest pleas unknowing and involuntary. Regarding his ineffective assistance of counsel claim, the petitioner argues that Mr. Maher rendered ineffective assistance in that he failed to:

- (1) Meet and discuss the case with the petitioner adequately, including failure to listen to petitioner's version of events and failure to prepare a defense;
- (2) Research appropriate case law and review discovery with the petitioner;
- (3) Seek bail for the petitioner;
- (4) Advise the petitioner of "alternatives" to pleading guilty and of risks and benefit of State's plea offer;
- (5) Subject the State's case to "meaningful adversarial testing" and failed to interview State witnesses; and
- (6) Explain the mens rea element to petitioner.

III. FACTUAL HISTORY

At the plea submission hearing, Mr. Maher offered the following factual basis for the petitioner's guilty pleas:

On or about January 13th, 2007, around 2:30 in the morning, at a location of Chapel Street and Locust Street in Clarksville, Montgomery County, Tennessee, a vehicle—the State would present was driven by Stevie Dickson, pulled up to a one Christopher Palmer and Cameron Williams, shots were fired, the State—through witness Decavius Duvall (phonetic), would testify that Mr. Stevie Dickson was the man doing the shooting from the vehicle. Mr. Palmer was struck and injured and went to the hospital. Mr.

Cameron Williams was struck, shot and killed at that time and in the vehicle was a Stevie Dickson, the driver; they would say that Corey Gardner was in the back seat along with Decavius Duvall was also in the back seat of that vehicle, with a Quintin Dukes sitting in the passenger seat of that vehicle. The State would also bring a Joshua Dunlap, who would say that Stevie Dickson told him while they were in jail together, that he admitted the shooting of Mr. Cameron Williams.²

IV. POST-CONVICTION HEARING TESTIMONY

At the post-conviction hearing, the petitioner's evidence consisted solely of his own testimony. The State's proof consisted of Mr. Maher's testimony.³ The Court accredits Mr. Maher's testimony and finds the petitioner's testimony not credible. The Court summarizes the testimony of both witnesses to facilitate appellate review.

Stevie Dickson

The petitioner recalled that Jeffrey Grimes represented him in General Sessions Court and that Mr. Maher was appointed to represent him in Circuit Court. The petitioner was 21 years old at the time he entered his guilty plea and had "no legal experience whatsoever" in the adult legal system. He said that he did not make bond before entering his pleas, but he offered no testimony about requesting a bond reduction or counsel's actions regarding the petitioner's pretrial confinement. The petitioner claimed there were few meetings between

² Plea submission hearing transcript, State of Tennessee v. Stevie Dickson, Montgomery Co. Case No. 40700511, Apr. 19, 2010, at 6-7.

³A transcript of the plea submission hearing was also introduced into evidence.

himself and counsel before he entered his guilty plea, and that these meetings lasted “around 10 to 15 minutes.” The petitioner said that he and Mr. Maher did discuss the facts of the case.

The petitioner claimed that he received a copy of the defense investigator’s report but that he did not receive a copy of the discovery in this case. The petitioner claimed that he pled guilty because he had “no other alternative” but to enter the plea, as he was trying to avoid a sentence of death or life without parole. The petitioner acknowledged that at the plea hearing he told the Court that he understood the terms of his guilty plea, but he claimed he did so because he was under the impression that he “had to go ahead and take it[.]”

When asked whether he was aware of any information now that would have led him not to plead guilty, the petitioner identified a potential witness, Josh Dunlap, who the petitioner had met while incarcerated at the Montgomery County Jail. The petitioner claimed Mr. Dunlap had written him a letter stating that his potential testimony at trial—in which Mr. Dunlap claimed the petitioner had confessed to Mr. Dunlap that the petitioner committed the offenses at issue—would have been perjured.

The petitioner also claimed to have received a letter from Decavius Duvall in which Mr. Duvall supposedly admitted to the petitioner that he (Mr. Duvall) would have been the “star witness” for the prosecution and would have testified that the petitioner “murdered Cameron Williams and attempted to murder Chris Palmer.” The petitioner made vague references to Mr. Duvall’s potential testimony being the result of “pressure applied,” but the

petitioner claimed that Mr. Duvall “was currently on the run from the law” and “really [did not] want to get into” the contents of Mr. Duvall’s letter.

The petitioner also faulted counsel for not finding the “transcripts” from his ankle monitoring system that he was wearing at the time of the shooting. The petitioner asserted that these records would have supported his claim that he was at home at the time of the incident. The petitioner said that he was unsure why these records were not available, but had the records been available, he would not have pled guilty.

On cross-examination, the petitioner acknowledged that neither Mr. Dunlap nor Mr. Duvall were present to testify at the post-conviction hearing. The petitioner admitted that at fifteen years of age, he was adjudicated delinquent on burglary charges. He said he was admitted to the Wilder Youth Development Center; as part of his post-release “aftercare,”⁴ he was wearing a required monitoring bracelet at the time of the shooting.

John Maher

Mr. Maher, an attorney licensed to practice in Tennessee since 1998, recalled that he represented the petitioner in Circuit Court. Counsel recalled that he and the petitioner were able to communicate well; the petitioner was able to explain what he knew about the case, and the investigator hired by counsel was able to follow the leads the petitioner provided. Counsel asserted that he reviewed the petitioner’s preliminary hearing transcript and

⁴ The petitioner was born September 17, 1988, and was 18 years old at the time of the shooting.

provided the petitioner with a copy of discovery. Mr. Maher said that if he had believed there was any issue about the petitioner's mental state or competency, counsel would have pursued that issue.

Mr. Maher testified that he was aware of the petitioner's past involvement with the juvenile court system. He said that he retained investigative services through Inquisitor, filing a Rule 13 motion that the Court granted. Mr. Maher retained these services because there were many issues to be investigated in this case, including those surrounding other witnesses and the petitioner's ankle bracelet monitoring system, and investigating these issues would have been beyond counsel's own abilities. Counsel stated that he and the investigator reviewed the investigative findings with the petitioner before the petitioner pled guilty.

Regarding the petitioner's ankle monitoring bracelet, counsel was aware that the ankle bracelet was supposed to be monitoring the petitioner's location at all times. However, in the course of the defense team's investigation, Mr. Maher learned that the "officer" responsible for monitoring the petitioner's location had turned off the ankle bracelet before the shooting "because Mr. Dickson said he was moving[.]" Counsel's investigation also indicated that the responsible party did not archive the records generated by the monitoring system.

Regarding the potential witnesses identified by the petitioner at the post-conviction hearing, Mr. Maher said that Mr. Dunlap did not speak with the defense team because of Mr. Dunlap's plea agreement. Counsel obtained the discovery from Mr. Dunlap's case and learned that Mr. Dunlap "would testify that in jail [the petitioner] had divulged to him that

[the petitioner] had in fact done the murder.” Regarding Mr. Duvall, counsel was aware that Mr. Duvall was in the car at the time of the shooting and gave a statement in which he claimed the petitioner fired the shots. Counsel recalled that at the preliminary hearing, Mr. Duvall did not answer questions regarding the identity of the shooter. Counsel learned before the potential trial date that Mr. Duvall had been subpoenaed by the State; when the defense investigator attempted to speak to Mr. Duvall, he refused, which led counsel to conclude that Mr. Duvall’s trial testimony would be detrimental to the petitioner’s case.

Counsel said that either he or his investigator spoke to all potential witnesses identified in discovery or the investigation report, except for one man who had died by the time counsel attempted to interview him. Mr. Maher recalled speaking to the other occupants of the car (apart from the petitioner and those who refused to talk); counsel noted that one occupant said that he heard gunshots and ducked (and therefore did not see the shooter), and the other occupant said he was asleep in the car before being woken by gunshots. At that point, this person ducked and did not see who was shooting. Mr. Maher also recalled meeting with the petitioner’s father and sister; he recalled that the petitioner’s family identified a witness who supposedly would have testified that the car used in the shooting was “out of service” before the shooting, but this potential witness had died before counsel located him.

Mr. Maher testified that he met twice with the petitioner concerning the plea agreement. At the first meeting, counsel and the petitioner discussed the plea; one week later, they had a 30-to-45-minute meeting during which the petitioner decided to enter a best

interest plea. Counsel said that he explained a best interest plea, and that the petitioner made the decision that it was in his best interest to enter the plea and avoid a potential life sentence. Counsel said that the State had never discussed the death penalty as a possibility in this case, nor did the prosecution file a notice to seek life without parole.

On cross-examination, Mr. Maher testified that he had represented clients in two murder cases before this case. Counsel said that he met with the petitioner about ten times during the course of his representation, and that the investigator met with the petitioner twice without counsel present to gather information.

In discussing the plea agreement, counsel said that he discussed the strength of the State's case with the petitioner. Mr. Maher said that once the State subpoenaed Mr. Duvall for trial and Mr. Duvall refused to speak with the defense investigator, counsel knew Mr. Duvall "probably didn't have anything good to say about us." Mr. Maher said the murder weapon in this case was not found.

V. STANDARDS OF REVIEW

(A) Post-Conviction Proceedings

A petitioner is entitled to post-conviction relief if the petitioner can establish that "the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." Tenn. Code Ann. § 40-30-103 (2012). The burden in a post-conviction proceeding is on the petitioner to prove

the factual allegations contained in his petition by clear and convincing evidence. Id. § 40-30-110(f); Dellinger v. State, 279 S.W.3d 282, 296 (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.” Hicks v. State, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998) (citing Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 n.3 (Tenn. 1992)).

There is a rebuttable presumption that a ground for relief not raised before a court of competent jurisdiction in which the ground could have been presented is waived. Tenn. Code Ann. § 40-30-110(f). A ground for relief is waived if the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented unless: (1) the claim for relief is based upon a constitutional right not recognized as existing at the time of trial if either the federal or state constitution requires retroactive application of that right; or (2) the failure to present the ground was the result of state action in violation of the federal or state constitution. Id. § 40-30-106(g)(1)-(2). Previously determined claims are also precluded from post-conviction review. See id. § 40-30-106(f). A ground for relief is previously determined if a court of competent jurisdiction has ruled on the merits after a full and fair hearing. Id. § 40-30-106(h). A full and fair hearing has occurred where the petitioner is afforded the opportunity to call witnesses and otherwise present evidence, regardless of whether the petitioner actually introduced any evidence. Id.

(B) Ineffective Assistance of Counsel

Under the Sixth Amendment to the United States Constitution, when a claim of ineffective assistance of counsel is made, the burden is on the petitioner to show that (1) counsel's performance was deficient and (2) the deficiency was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984); see Lockart v. Fretwell, 506 U.S. 364, 368-72 (1993). A showing that counsel's performance falls below a reasonable standard is not enough; rather, the petitioner must also show that but for the substandard performance, "the result of the proceeding would have been different." Strickland, 466 U.S. at 694. The Strickland standard has been applied to the right to counsel under article I, section 9 of the Tennessee Constitution. State v. Melson, 772 S.W.2d 417, 419 n.2 (Tenn. 1989).

A petitioner will only prevail on a claim of ineffective assistance of counsel after satisfying both prongs of the Strickland test. See Henley v. State, 960 S.W.2d 572, 580 (Tenn. 1997). Failure to satisfy either prong results in the denial of relief. Strickland, 466 U.S. at 697. "Indeed, a court need not address . . . both [Strickland components] 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 695).

The performance prong requires a petitioner raising a claim of ineffectiveness to show that the counsel's representation fell below an objective standard of reasonableness or "outside the wide range of professionally competent assistance." Strickland, 466 U.S. at 690. In Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975), the Tennessee Supreme Court held

that attorneys should be held to the general standard of whether the services rendered were within the range of competence demanded of attorneys in criminal cases.

The prejudice prong requires a petitioner to demonstrate that “there is a reasonable probability that, but for counsel’s professional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694. “A reasonable probability means a probability sufficient to undermine confidence in the outcome.” Id. “The probable result need not be an acquittal. A reasonable probability of being found guilty of a lesser charge, or a shorter sentence, satisfies the second prong in Strickland.” Brimmer v. State, 29 S.W.3d 497, 508-09 (Tenn. Crim. App. 1998).

On claims of ineffective assistance of counsel, the petitioner is not entitled to the benefit of hindsight, may not second-guess a reasonably based trial strategy, and cannot criticize 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). 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).

VI. PETITIONER’S CLAIMS FOR RELIEF

Mr. Dickson’s primary assertions are that Mr. Maher rendered the ineffective assistance of counsel, and that this ineffective assistance rendered Mr. Dickson’s guilty pleas

unknowing and involuntary. When a post-conviction petitioner asserts that his attorney's ineffective assistance led to the petitioner's entering an involuntary guilty plea, the Supreme Court has required the petitioner to demonstrate a reasonable probability that but for the attorney's ineffectiveness, the petitioner would not have entered the guilty plea and would have insisted on proceeding to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

(A) Ineffective Assistance of Counsel

Regarding the petitioner's ineffective assistance of counsel claim, Mr. Dickson argues that counsel met with him only briefly, did not provide the petitioner with a copy of discovery, and did not investigate the petitioner's electronic monitoring system. The court does not find this testimony credible; rather, the Court accredits Mr. Maher's testimony. Mr. Maher testified that he had no problems communicating with the petitioner effectively. Counsel provided the petitioner with all discovery in this case and investigated the electronic monitoring issue only to find that the ankle monitoring bracelet had been deactivated by the day of the offense. Mr. Maher also retained an investigator who interviewed witnesses and followed leads identified by the petitioner. Counsel testified that after his investigation, he reviewed the investigative findings with the petitioner before the petitioner decided to enter a best interest plea. Counsel's performance in preparing for this case cannot be considered

deficient. Accordingly, the Court concludes that counsel did not render ineffective assistance in this case.⁵

(B) Unknowing and Involuntary Guilty Plea

The petitioner argues that counsel's actions rendered his (Mr. Dickson's) guilty plea unknowing and involuntary. However, as explained above, counsel conducted a more-than-adequate investigation in this case and related the findings of his investigation to the petitioner. Counsel testified that he and the petitioner met twice regarding the plea agreement; at the first meeting, the two men discussed the proposed agreement, and one week later Mr. Dickson told Mr. Maher that he (the petitioner) would accept the deal. At the plea submission hearing, the petitioner admitted that he understood the terms of the plea agreement and acknowledged that the plea was in his best interest. The petitioner now argues that he only entered the plea because he felt compelled to do so, but such a conclusion is not reasonable given Mr. Maher's testimony.

Mr. Dickson also argues that had he known that Mr. Dunlap's proposed testimony would have been perjured, he would not have pled guilty. However, Mr. Dunlap did not testify at the post-conviction hearing, nor did the petitioner introduce Mr. Dunlap's supposed

⁵ The petitioner also presented no evidence regarding his claims that counsel failed to explain the mens rea element of the charged offenses and that counsel failed to seek bond for the petitioner. Thus, he has failed to establish these factual claims by clear and convincing evidence.

letter regarding the “perjured” testimony into evidence, so the Court cannot accredit the petitioner’s testimony regarding Mr. Dunlap. Also, the petitioner claimed to have received the Dunlap letter after entering his plea, and Mr. Maher was unable to speak to Mr. Dunlap before trial given Mr. Dunlap’s own plea, so there is no evidence that the petitioner or counsel could have known about Mr. Dunlap’s supposedly perjured testimony before trial. In short, there is no evidence to support the petitioner’s assertion that his best interest plea was entered unknowingly or involuntarily. The petitioner is therefore not entitled to post-conviction relief.

VII. CONCLUSION

For the reasons stated above, the petition for post-conviction relief is DENIED.

IT IS SO ORDERED this the 22th day of May, 2013



John H. Gasaway, III
Circuit Court Judge