

IN THE CRIMINAL COURT OF HELBY COUNTY, TENNESSEE
30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION VI

RASHAWN JONES,)
 Petitioner)
VS.) No. 18-06928,-30
))
STATE OF TENNESSEE,)
 Respondent.)

ORDER DENYING
PETITION FOR POST-CONVICTION RELIEF

This cause came on to be heard upon the Petition for Post-Conviction Relief filed in this cause; upon an evidentiary hearing that was heard on November 13, 2020; and upon the entire record of this cause.¹ The petitioner alleges that his trial counsel was ineffective and that he did not enter a knowing and voluntary guilty plea. For the reasons as set forth in this Order, the petition for post-conviction relief should be denied.

HISTORY OF THE CASE

The defendant was indicted by the Shelby County Grand Jury for the offenses of Aggravated Robbery (5 indictments), Robbery, Criminal Attempt to wit Aggravated Robbery, Robbery, Identity Theft and Car Jacking on November 27, 2018. The Shelby County Public Defender had a conflict and could not represent the petitioner so Nykedra Johnson was appointed to represent the petitioner by the Trial Court. On July 10, 2019 the petitioner entered a guilty plea to three indictments for the lesser included offenses of Robbery and received an agreed 18 year sentence as a range 1 standard offender. All the other charges were dismissed as part of the guilty plea. On February 13, 2020 the

¹ Due to the fact that the Tennessee Department of Correction is not transporting any inmates to local facilities because of COVID, this hearing was conducted virtually without objection.

petitioner filed a petition for post-conviction relief alleging that his guilty plea was not knowingly and voluntarily entered. Counsel was appointed and the case proceeded to evidentiary hearing.

ALLEGATIONS OF THE PETITIONER

The petitioner alleges that his trial counsel was ineffective and that petitioner did not understand the terms and consequences of his guilty plea. For the reasons stated below, the Petition is denied.

STATEMENT OF EVIDENCE

The petitioner testified that he was represented by Nykedra Jackson who was appointed to represent the defendant in Division 6 of Criminal Court due to a conflict with the public defender. Ms. Jackson represented the defendant during the time the defendant was in criminal court and when he entered his guilty plea. The petitioner testified that his lawyer did not do anything that he asked her to do in his case before he entered his guilty plea. The petitioner testified that he wanted his counsel to file a motion to suppress his statement because he did not give it voluntarily or knowingly. The petitioner also alleged that he was a juvenile when he was arrested and he was not allowed to talk to a parent or guardian before he was questioned. The petitioner admitted that he gave the statement to the police and he never asked for an attorney. The petitioner further testified that he had a conflict with his attorney in that he did not feel that she knew what she was doing. The petitioner stated that he discussed obtaining videos of the crime scenes with Ms. Jackson and she never produced them. The petitioner also testified that Ms. Jackson did not visit him enough so he could understand what he was charged with. When confronted by post-conviction counsel with the fact that the petitioner did not mention any of this when asked if he was satisfied with his attorney at the guilty plea, petitioner stated that he was on medication that prevented him from understanding what was going on. This concluded the petitioner's case.

The State presented the petitioner's trial counsel, Nykedra Jackson as its witness who testified that she was appointed to represent the petitioner. Ms. Jackson testified that she got full discovery from the State and it contained a tremendous amount of material. Ms. Jackson shared this information with the petitioner and discussed the material with him on several occasions. When asked if she had a good relationship with the petitioner, Ms. Jackson testified that she really cared about the petitioner and his situation and would meet with him more often than normal just to see how he was doing. Ms. Jackson testified that she was aware that the petitioner had mental health issues and sought a mental evaluation that resulted in no favorable evidence for the defense. Ms. Jackson testified that the petitioner had good and bad days due to his condition. On the day the petitioner pled guilty Ms. Jackson testified that the petitioner was having a good day. Ms. Jackson testified that the petitioner was facing 17 indictments and looking at spending the rest of his life in prison. The State made a fair offer and she recommended that the petitioner take it. Ms. Jackson testified that she discussed the matter with the petitioner's mother and she agreed that the petitioner needed to take the offer. This information was relayed to the petitioner and he decided to take the plea deal. At the time the petitioner entered his guilty plea Ms. Jackson testified that she saw nothing that gave her concern that the petitioner did not know what he was doing.

Ms. Jackson was asked why she did not file a motion to suppress and she responded that there was other evidence that connected the petitioner to the crimes charged and since she got a favorable plea agreement she did not want to jeopardize the deal by pursuing a motion to suppress.

FINDINGS OF FACT

From the proof the Court finds that counsel received complete discovery from the State and shared all the information with the petitioner. Counsel was aware of the petitioner's mental issues and sought a mental evaluation to see if there was any possible mental defenses that could be useful.

After the evaluation counsel found that no defense could be supported. Even though the petitioner did not have a mental defense, counsel was aware of the petitioner's mental issues and monitored the situation as the case progressed. Counsel did not pursue litigating a motion to suppress after determining that this avenue would not lead to any benefit and could possibly lead to not getting a favorable plea agreement. The petitioner was facing a large number of cases that carried a tremendous amount of time and the deal reached was truly to the petitioner's benefit. Other than bare assertions, the petitioner provided no evidence to support his allegations. The Court found Ms. Jackson very credible and the petitioner not credible.

CONCLUSIONS OF LAW

The Court begins its inquiry with the presumption that trial counsel was effective in her representation of the petitioner. *Strickland v. Washington*, 466 U.S. 668; 104 S. Ct. 2052; 80 L. Ed. 2d 674; 1984. In *Strickland*, the Supreme Court established a two prong test placing the burden on a petitioner to prove that the performance of counsel fell below the range of competence expected of criminal defense attorneys and that this deficient performance resulted in prejudice. The petitioner must prove his case with clear and convincing evidence. Performance, as defined by the Tennessee Supreme Court in *Baxter v. Rose*, 423 S.W.2d 930 (1975) is stated:

We believe a better standard, expressed in the generalities of *McMann, supra*, is simply whether the advice given, or the services rendered by the attorney, are within the range of competence demanded of attorneys in criminal cases. We would measure that range of competence by the duties and criteria as set forth in *DeCoster, supra*, and by our own Sixth Circuit case of *Beasley, supra*.²

Under *Strickland*, once a petitioner establishes that counsel fell below the standard of competence expected of a defense attorney, the second, performance, prong must be met showing that but for

² *Baxter v. Rose*, 423 S.W.2d at page 936, citing *McMann v. Richardson*, 397 U.S. 759, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970), *United States v. DeCoster*, 159 U.S.App.D.C. 326, 487 F.2d 1197 (1973), *Beasley v. United States*, 491 F.2d 687 (6th Cir. 1974).

the failure of counsel to perform up to the standard of competence the outcome of the trial would have been different.

To make sure that a person enters a guilty plea that is both knowing and voluntary, the law requires that the Court conduct an inquiry to make sure the defendant knows the circumstances of the plea as well as the consequences. The Supreme Court in *Ward v. State* stated:

When a defendant enters a guilty plea, he or he waives several constitutional rights, including the right against self-incrimination, the right to a trial by jury, and the right to confront his or he accusers. *State v. Mellon*, 118 S.W.3d 340, 345 (Tenn.2003). To pass constitutional muster under the Due Process Clause of the United States Constitution, a guilty plea must be entered knowingly, voluntarily, and intelligently. *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); *Brady v. United States*, 397 U.S. 742, 747, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970); *Boykin v. Alabama*, 395 U.S. 238, 242–44, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Mackey*, 553 S.W.2d 337, 340 (Tenn.1977). In making the determination of whether a guilty plea was knowingly, voluntarily, and intelligently entered, the standard of inquiry is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Grindstaff*, 297 S.W.3d at 218 (quoting *Jaco*, 120 S.W.3d at 831); see also *Alford*, 400 U.S. at 31, 91 S.Ct. 160. A plea is not voluntary unless the defendant understands the consequences of his or he plea. *Mellon*, 118 S.W.3d at 345. It follows then that “a plea is not ‘voluntary’ if it results from ignorance, misunderstanding, coercion, inducements, or threats.” *Id.* (quoting *Blankenship v. State*, 858 S.W.2d 897, 904 (Tenn.1993)). The waiver of these fundamental rights cannot be presumed, but must be evident in the record. *Id.* Thus, “the 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; otherwise, it will not amount to an ‘intentional abandonment of a known right.’ ” *Mackey*, 553 S.W.2d at 340; see also *State v. Pettus*, 986 S.W.2d 540, 542 (Tenn.1999). To find that the plea was entered “intelligently” and “knowingly,” the trial court must discuss the matter with the accused to make sure he or he “has a full understanding of what the plea connotes and of its consequences.” *Blankenship*, 858 S.W.2d at 904 (quoting *Boykin*, 395 U.S. at 244, 89 S.Ct. 1709) (emphasis omitted).³

The Court continued with a discussion of what the Court must discuss with the defendant when taking a guilty plea. The Court stated:

In Tennessee, before accepting a guilty plea, the trial court is required to

³ *Ward v. State*, 315 S.W.3d at pages 465-466.

inform the defendant of, and determine that he or he understands, the following:

- 1) the nature of the charge to which the plea is offered and the mandatory minimum and maximum penalty provided by law;
- 2) the right of the defendant to be represented by counsel at every stage of the proceedings;
- 3) the right of the defendant to plead not guilty and to persist in that plea, the right to a jury trial, the right to assistance of counsel at trial, the right to confront and cross-examine witnesses against him, and the right against compelled self-incrimination;
- 4) that by pleading guilty or nolo contendere, the defendant waives the right to a trial; and
- 5) that if the defendant enters a guilty or nolo contendere plea, the trial court may question the defendant regarding the offenses and that any of the defendant's answers made under oath, on the record, and in counsel's presence may later be used against the defendant in a subsequent prosecution for perjury or false statement.

Howell v. State, 185 S.W.3d 319, 331 (Tenn.2006) (citing *Tenn. R.Crim. P. 11(c)(1)(5)*). In addition to these matters specified by *Tennessee Rule of Criminal Procedure 11(b)*, the defendant must be advised, "if applicable, that a different or additional punishment may result by reason of his prior convictions or other factors which may be established in the present action after the entry of his plea." *Mackey*, 553 S.W.2d at 341.⁴

It is the petitioner's position that his plea was not knowing or voluntarily entered because he claims that his counsel was ineffective and gave him bad advice that he relied upon to his detriment. Based on the record, the Court finds that the petitioner has failed to prove that his plea was not knowingly or voluntarily entered or that he did not understand his plea agreement.

An examination of the guilty plea transcript shows that the Court adhered to the requirements of the law and the rule in explaining to the petitioner he guilty plea.⁵ To each question asked by the Court the petitioner answered, unequivocally, that he understood what the Court was saying and did not answer in any way to indicate that he was hesitant about his guilty plea. The transcript reveals no ambiguity on the part of the petitioner about his understanding of his rights or

⁴ *Ward v. State*, 315 S.W.3d at page 466.

⁵ See Exhibit 1 Guilty Plea transcript.

the terms of the guilty plea. The petitioner was asked specifically if he was satisfied with his attorney and whether Ms. Jackson answered all his questions and did everything he had asked her to do for him. The petitioner answered unequivocally that Ms. Jackson had discussed his case with him, answered all his questions and did everything she was asked to do. When asked why he is claiming now something different under oath now then what he stated under oath at his guilty plea, the petitioner answered that at the time of his guilty plea he was on medication that affected his understanding. This is contradicted by the testimony of Ms. Jackson who stated that the petitioner showed no sign of being under the influence of any medications. At the time of the plea the Court did not notice anything that created concern that the petitioner was confused or under the influence. Furthermore, the petitioner testified that he was on the same medication at the time of the evidentiary hearing as he was at the guilty plea and he showed no sign of confusion. The Court credits the testimony of Ms. Jackson and does not find the petitioner credible.

The Court finds that the petitioner has failed to show by clear and convincing evidence that the failure of counsel to pursue a motion to suppress was ineffective and resulted in prejudice. The petitioner has presented no evidence to establish that he would have prevailed in said motion. Other than his statement that he thinks the outcome would have been different no evidence was presented to prove what a motion to suppress would have accomplished. The Court will not assume what is not in evidence. Since the petitioner has the burden of proving his case, and there being no proof to contradict the decision by trial counsel, this allegation is without merit. *Grindstaff v. State*, 279 S.W. 3d 208 (Tenn. 2009). This Court will not second guess trial strategy unless it is unreasonable and not based on adequate preparation. As the Tennessee Supreme Court in *Hellard v. State*, 629 S.W.2d 4 (Tenn. 1982) stated:

Although in *Baxter* we adopted a higher standard of competence for the legal representation required in criminal cases, we did not require perfect representation. Moreover, the defense attorney's representation, when questioned, is not to be measured by "20-20 hindsight."

“Hindsight can always be utilized by those not in the fray so as to cast doubt on trial tactics a lawyer has used. Trial counsel’s strategy will vary even among the most skilled lawyers. When that judgment exercised turns out to be wrong or even poorly advised, this fact alone cannot support a belated claim of ineffective counsel.” *Robinson v. United States*, 448 F.2d 1255 at 1256 (8th Cir. 1971).

The court in *DeCoster*, *supra*, limited the new standard of competence there adopted by the following language:

“This court does not sit to second guess strategic and tactical choices made by trial counsel. However, when counsel’s choices are uninformed because of inadequate preparation, a defendant is denied the effective assistance of counsel.” *DeCoster*, 487 F.2d 1197 at 1201.

It cannot be said that incompetent representation has occurred merely because other lawyers, judging from hindsight, could have made a better choice of tactics. See: *United States ex rel. Burton v. Cuyler*, 439 F.Supp. 1173 at 1187 (E.D.Pa.1977). As former trial lawyers, we know that a criminal trial is a very dramatic, vibrant and tense contest involving many variables and that counsel must make quick and difficult decisions respecting strategy and tactics which appear proper at the time but which, later, may appear to others, or even to the trial lawyer himself, to have been ill considered.⁶

The Court finds that the petitioner has not shown by clear and convincing evidence that he received ineffective assistance of counsel or that he guilty plea was not knowing and voluntarily entered. At the time of his guilty plea the petitioner had been charged with a series of Carjackings and Aggravated Robberies. The petitioner negotiated a plea bargain that resulted in a number of his cases be dismissed and he entered a plea of guilty to only a few of the charges. From the testimony of the petitioner it is clear that he is not satisfied with his plea agreement now and wants to use the post-conviction process as a vehicle to re-negotiate his sentence. This is not the purpose of the post-conviction statute. The petitioner's Petition for Post-Conviction Relief should be DENIED.

⁶ *Hellard v. State*, 629 S.W.2d at pages 9-10., See also *Goad v. State*, 938 S.W.2d 363 (Tenn. 1996); *Alley v. State*, 958 S.W.2d 138 (Tenn.Crim.App. 1997).

IT IS, THEEFORE, ORDERED, ADJUDGED AND DECREED that the Petition for Post-Conviction Relief is hereby denied.

Entered this _____ of _____, 2021.

John W. Campbell, Judge
Criminal Court, Div. VI