IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER 1999 SESSION

FILED

January 18, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

DEON BRADEN,	*	C.C.A. # 01C01-9903-CC-00070 **M1999-02297-CCA-R3-PC**
Appellant,	*	Maury County
VS.	*	Honorable Jim T. Hamilton, Judge
STATE OF TENNESSEE,	*	(Post-Conviction)
Appellee.	*	

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OPINION FILED: _______________

AFFIRMED

JOHN EVERETT WILLIAMS,
Judge

OPINION

The petitioner, Deon Braden, appeals from the Maury County Circuit Court's denial of his petition for post-conviction relief after an evidentiary hearing. The petitioner was serving an eleven-year sentence when he pled guilty to assault and to Schedule II controlled substance charges. He received fifteen years, as a career offender, on those pleas. He asserts that he received ineffective assistance of counsel at the plea hearing and that his pleas were involuntary. After careful

review, we AFFIRM the trial court's judgment.

PROCEDURAL HISTORY

After receiving probation from an eleven-year sentence, the petitioner was charged with seven offenses. On April 27, 1994, the petitioner pled guilty to aggravated assault, attempted aggravated assault, and two counts of possession of cocaine for resale. The petitioner's fifteen-year sentence, at 60% as a career offender, was imposed consecutive to the earlier eleven-year sentence. On August 3, 1995, the petitioner filed a pro se petition for post-conviction relief alleging involuntary pleas because of ineffective assistance of counsel. Counsel was appointed, and on September 13, 1996, an evidentiary hearing was held.

The petitioner testified at this hearing that Gary Howell, his appointed trial counsel, failed to discuss the state's evidence with him. The trial court inquired if counsel advised the petitioner of the elements of the offenses that the state must prove, of the potential sentence, and of the nature of the sentencing hearing. To each of these questions the petitioner replied, "Not to my knowledge, sir." The petitioner did recall counsel's advising him that the state would drop three of seven charges and accept pleas to the remaining four charges. The petitioner testified that counsel did not advise him that he was a likely candidate for consecutive sentencing and for career criminal range status. However, the petitioner stated that he "wouldn't want to" have a jury trial and that Howell had talked about the case and their minimal chance of a favorable verdict at trial.

Howell testified that he viewed the state's videotaped evidence and discussed it with the petitioner. He said that he definitely remembered reviewing the offer sheet from the state. He and the plaintiff agreed that the state's initial thirty-year offer, consecutive to the existing eleven-year sentence, was excessive. On cross-examination, Howell testified that he did not advise the petitioner of his potential career offender status and did not recall whether he told the petitioner he might be sentenced consecutively on an open plea. However, Howell stated that their options were trial, open plea, or the state's offer, and the open plea offered the strongest chance for the best results.

The hearing was held on September 13, 1996, and as of July 24, 1997, no order had been entered. Therefore, on that date the petitioner moved for clarification of judgment, and the trial court entered a form judgment denying and dismissing the petition for lack of merit. On appeal, a panel of this Court remanded for findings of fact regarding the petitioner's claim that he was unaware of possible sentences regarding his pleas. See Deon Braden v. State, No. 01C01-9708-CC-00351 (Tenn. Crim. App. filed July 15, 1998, at Nashville).

No additional proof was taken, and the only additional information in the record for the instant appeal is the trial court's written findings of fact. These findings, comprised within an order, refer to the defendant's signed petition to plea, in which the petitioner acknowledged that counsel advised him (1) of the nature and cause of the action against him; (2) of the available defenses; and (3) of the possible ranges of punishment. The order also stated that the trial court did not review the possible range of punishments with the petitioner at the hearing. Further, that court found that the petitioner received effective assistance of counsel and that the sentences were properly imposed.

ANALYSIS

The petitioner asserts reversible error because his guilty plea was involuntary as a result of ineffective assistance of counsel. The petitioner alleged in his Petition for Post-Conviction Relief that:

(1) neither the court nor his trial counsel adequately advised him of the potential sentence he was facing following his pleas, and

(2) his pleas were therefore entered unknowingly, unintelligently, and were thus involuntarily.

The trial court, after an evidentiary hearing, found the petition to be without merit. At an evidentiary hearing pursuant to a post-conviction relief petition, the petitioner must provide clear and convincing evidence that a "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. §§ 40-30-203, - 210(f). The trial court's findings of fact and conclusions of law from the petitioner's evidentiary hearing carry the weight of a jury verdict. See Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990). This Court neither reweighs nor reevaluates evidence and does not substitute its own inferences for those determined by the trial court. See id. The petitioner must show that "the evidence contained in the record preponderates against the judgment entered in the cause." Id. Further, on such an appeal this Court grants a strong presumption that counsel rendered effective assistance. See Davis v. State , 912 S.W.2d 689, 697 (Tenn. 1995).

The submitted record omits the petitioner's petition for guilty plea. The trial court's findings of fact referenced this document in its factual findings, and a signed document in which the petitioner acknowledges his understanding of the charges against him and of his possible punishments is material to our review. The petitioner bears the responsibility for providing a complete record necessary for this Court's determining the issues, see Tenn. R. App. P. 24(b); State v. Banes, 874 S.W.2d 73 (Tenn. Crim. App. 1993), and we must presume that the trial court's order accurately reflects the petitioner's contents rather than speculate in the document's absence from the record. The petitioner bears the burden of showing the trial court's findings of fact wrong by preponderance of the evidence in the record, see Black, 794 S.W. 2d at 755, and the petitioner's testimony at his hearing does not carry this burden. This issue is without merit.[1]

CONCLUSION

The judgment of the trial court is AFFIRMED.

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JOHN EVERETT WILLIAMS, Judge

CONCUR:

[1] Although not specifically invoked as an issue by the petitioner, the trial court's failure to advise the petitioner of the range of possible punishments for his offenses does not violate a constitutional obligation and cannot provide the basis for post-conviction relief. See Sneed v. State, 942 S.W.2d 567, 568 (Tenn. Crim. App. 1996).

JOHN H. PEAY, Judge

DAVID H. WELLES, Judge