

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE 1995 SESSION

<p>FILED</p> <p>September 13, 1995</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

<p>JOHN BUCHANAN, Appellant, V. STATE OF TENNESSEE, Appellee.</p>	<p>)) C.C.A. No. 02C01-9502-CR-00048)) Shelby County)) Hon. Joseph B. McCartie, Judge)) (Post-Conviction)))</p>
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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

Petitioner John Buchanan filed a petition for post-conviction relief in the Criminal Court at Shelby County challenging the voluntariness of his guilty pleas. After a hearing the trial court dismissed the petition, finding no merit to his claim. On appeal, petitioner essentially argues that the evidence preponderates against the trial court's findings.

We affirm the judgment of the trial court.

The petitioner pled guilty to first-degree murder and aggravated robbery. He received sentences of life and twelve years to run concurrently. At the guilty plea hearing, the stipulated facts were that the petitioner and three codefendants went to the victim's home to steal money. They tied up the victim. When they found no money, petitioner and his codefendants stole certain other property and left the victim's apartment. Shortly thereafter, one or several of the four perpetrators decided that the victim should be killed because he could recognize them. Apparently, the petitioner and a codefendant went back to the victim's apartment and the codefendant shot and killed the victim. The petitioner and the other perpetrators confessed to participating in the crimes.

At the hearing on his petition for post-conviction relief, the petitioner argued that his attorney coerced him into pleading guilty. He asserted that his attorney did more than advise him about the possibility of a death sentence, but assured him that there could be no other sentence if he proceeded to trial. When a defendant pleads guilty, the plea must be voluntary, understandingly and knowingly entered. Boykin v. Alabama, 395 U.S. 238, 244 (1969); State v. Mackey, 553 S.W.2d 337 (Tenn. 1977). A plea of guilty induced by coercion, inducements, or subtle threats is not voluntary. Capri Adult Cinema v. State, 537 S.W.2d 896, 898 (Tenn. 1976); Parham v. State, 885 S.W.2d 375, 380 (Tenn.

Crim. App. 1994). The entry of a plea of guilty to avoid a death sentence, however, does not by itself make the plea involuntary. Parham, 885 S.W.2d at 381.

The trial court found the petitioner's guilty pleas constitutionally valid. The court found that the sentencing court informed the petitioner of his constitutionally protected rights and that the testimony elicited at the guilty plea hearing directly contradicted the petitioner's claim that he involuntarily entered his guilty plea.

On post-conviction relief appeals, the trial court's findings of fact are conclusive unless the evidence preponderates against those findings. Butler v. State, 789 S.W.2d 898, 899 (Tenn. 1990); Parham, 885 S.W.2d at 379. The burden is on the petitioner to show that the evidence preponderates against the findings of the trial court. Parham, 885 S.W.2d at 379. On appeal, the petitioner points to the following testimony to meet his burden. The petitioner testified that his attorney advised him that:

"Well, if you lose, you're going to get death. There ain't no way around it, . . ."

* * *

"Like if I don't take this--if I don't take the life sentence, and I go to trial, I'm fixing to get up on death row."

* * *

"He just--everything that we talked was about just I could either take the life sentence or go to trial and get death."

The evidence amply supports the trial court's finding that the petitioner entered his guilty pleas voluntarily. The record clearly reflects the strength of the state's case and the lack of a feasible defense. The sentencing court thoroughly informed the petitioner of his constitutionally protected rights to insure that his pleas were knowing and voluntary. At the post-conviction hearing, Arch Boyd, III,

petitioner's attorney at the guilty plea hearing, testified that he informed the petitioner that if he went to trial he could face the death penalty but that he did nothing to coerce the petitioner into pleading guilty. Boyd further testified that he told the petitioner that the decision to plead guilty was the petitioner's decision. On appeal, this Court may not reweigh or reevaluate the evidence. Id. Furthermore, the trial court evaluates the credibility of witnesses and determines the weight and value of their testimony. Id. The trial court could have chosen to believe Boyd's testimony and discredit that of the petitioner. This issue is without merit.

Petitioner appears to argue that his guilty plea was involuntary because he received ineffective assistance of counsel. He contends that Boyd should have developed a defense because he was not the triggerman and did not know that the triggerman was going to kill the victim. Where a petitioner relies on the claim that his plea was involuntary as a result of ineffective assistance of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded by attorneys in criminal cases. Hill v. Lockhart, 474 U.S. 52, 56 (1985); see Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). A petitioner has the burden of showing that his counsel's performance was deficient and that the deficient performance prejudiced his case. Hill, 474 U.S. at 58.

At the post-conviction hearing, Boyd testified that the petitioner gave a statement to the police while he was represented by counsel that was basically a confession to murder during the perpetration of a felony. Boyd testified that he explained the felony murder rule to the petitioner and told the petitioner that he could still face the death penalty even though he was not the triggerman. This advice was within the range of competence demanded of attorneys in criminal cases. Furthermore, Boyd tried to convince the district attorney to reduce the

offer to second-degree murder because the petitioner was not the triggerman. Accordingly, this issue is without merit.

The petitioner also raised several other allegations of ineffective assistance of counsel in his petition for post-conviction relief and offered testimony in support thereof at the post-conviction hearing. Although he has abandoned these issues for failure to adequately address them in his brief on appeal, we have nonetheless reviewed the record thoroughly. We conclude that the evidence is more than sufficient to support the trial court's finding that these allegations are without merit.

AFFIRMED

PAUL G. SUMMERS, JUDGE

CONCUR:

WILLIAM M. BARKER, JUDGE

MARY BETH LEIBOWITZ, SPECIAL JUDGE