

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

MARCH 1995 SESSION

FILED

September 27, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

WADE TATE, * C.C.A. # 02C01-9411-CR-00259
APPELLANT, * SHELBY COUNTY
VS. * Hon. H. T. Lockard, Judge
STATE OF TENNESSEE, * (Post-Conviction)
APPELLEE. *

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OPINION FILED: _____

AFFIRMED

Gary R. Wade, Judge

OPINION

The petitioner, Wade Tate, appeals the trial court's denial of his petition for post-conviction relief. The issues presented for review are as follows:

- (1) whether the petitioner received the effective assistance of counsel at trial; and
- (2) whether the petitioner's guilty pleas were knowingly and voluntarily made.

We find no error and affirm the judgment of the trial court.

In early 1990, the petitioner was charged with the second degree murder of Robert L. Davis. A few months later, the petitioner and two others were charged with the first degree murder of Elmer L. Taylor. In the fall of 1990, the petitioner was appointed counsel on each case. About six months later, a second attorney was appointed to assist in the representation of the petitioner. On January 14, 1992, the petitioner entered guilty pleas to two counts of second degree murder. As part of a plea agreement, the trial court imposed concurrent, Range III sentences of fifty years on each count.

Until the date of trial, the state had offered the petitioner's attorneys a sentence of life imprisonment in exchange for a guilty plea. The petitioner had sought a fixed term. On the date of trial, the state offered concurrent fifty-year sentences, Range III, although the petitioner would have only qualified for a Range I sentence. See Tenn. Code Ann. § 40-35-105, et seq. Despite his claimed displeasure

with the performance of his trial attorneys and his assertion that he was confused about the nature of the proposed plea agreement, the petitioner accepted the state's offer, waived his rights to trial, and entered guilty pleas.

At the evidentiary hearing on the post-conviction petition, the petitioner claimed that he had not understood what his trial counsel had proposed. He testified that he had merely acquiesced in the plea agreement as a result of pressure applied by his trial counsel. The petitioner acknowledged that the trial judge had advised him of his constitutional rights at the submission hearing and that he had been satisfied with the performance of his trial counsel at the time of his pleas. The petitioner contended, however, that he waived his rights and entered his pleas only because he was "grossly misled" by his trial counsel. He specifically complained that his counsel was ineffective for having failed to interview an eyewitness he identified as "Keith." The petitioner asserted that an adequate investigation would have established a legitimate self-defense claim to the second degree murder charge.

The trial court made detailed findings of fact and conclusions of law in denying the petition for post-conviction relief. It found that trial counsel had conducted a thorough investigation and had otherwise provided adequate professional services. It specifically found, accrediting the testimony of trial counsel, that the petitioner had not provided names of possible witnesses. Finally, the trial court found that the

petitioner had been advised of each of his constitutional rights and that his pleas had been knowingly and voluntarily entered.

I

In order for the petitioner to be granted relief on grounds of ineffective assistance of counsel, he must establish that the advice given or the services rendered were not within the range of competence demanded of attorneys in criminal cases and that, but for his counsel's deficient performance, the result of his trial would have been different. Strickland v. Washington, 466 U.S. 668 (1984) Baxter v. Rose, 523 S.W.2d 930 (Tenn. 1975). This two-part standard, as it applies to guilty pleas, is met when the petitioner establishes that, but for his counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The burden is on the petitioner to show that the evidence preponderated against the findings of the trial judge. Clenny v. State, 576 S.W.2d 12 (Tenn. Crim. App. 1978). Otherwise, the findings of fact made by the trial court are conclusive. Graves v. State, 512 S.W.2d 603 (Tenn. Crim. App. 1973).

Trial counsel, with six years of professional experience, testified that he met with the petitioner over twenty times before the guilty pleas were entered. The state had given notice of its intention to seek the death penalty.

A mental evaluation of the petitioner indicated that he was competent to stand trial. Trial counsel testified at the evidentiary hearing that he had read the waiver of rights document line by line to the petitioner who represented that he understood the content, was pleased with his professional services, and understood the nature of the plea agreement. Because the trial court accredited the testimony of trial counsel and the evidence in this record does not preponderate against those findings, we must conclude that the petitioner received the effective assistance of counsel.

II

In Boykin v. Alabama, 395 U.S. 238 (1969), the United States Supreme Court ruled that defendants should be advised of certain of their constitutional rights before entering pleas of guilt. Included among those required warnings are the right against self-incrimination, the right to confront witnesses, and the right to a trial by jury. Id. at 243. The overriding Boykin requirement is that the guilty plea must be knowingly and voluntarily made. Id. at 242-44. In State v. Mackey, 553 S.W.2d 337 (Tenn. 1977), our supreme court established a procedure for trial courts to follow in accepting guilty pleas.

The petitioner does not contend that the trial court failed to follow the required procedure. Instead, he asserts that the questions asked by the trial judge at the submission hearing were so "routine" and "perfunctory" that he was unable

to adequately comprehend the nature of his acts.

We cannot agree.

A mental evaluation established that the petitioner understood the nature of the charges against him. He was warned of his constitutional rights on the record and waived those rights only after his trial counsel had reviewed the content "line by line." In fact, nothing in the record suggests that the pleas were anything other than knowingly and voluntarily made. No matter how "routinely" the petitioner was questioned prior to entering the pleas, the record clearly demonstrates that he understood his options.

Accordingly, the judgment is affirmed.

Gary R. Wade, Judge

CONCUR:

Joe B. Jones, Judge

John K. Byers, Senior Judge