

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MARCH SESSION, 1994

FILED

January 26, 1996

**Cecil W. Crowson
Appellate Court Clerk**

JOE HENRY ANGUS)
)
 APPELLANT)
)
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 V.)
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)
 STATE OF TENNESSEE)
)
)
 APPELLEE)

NO. 01C01-9310-CC-00378
BEDFORD COUNTY
HON. CHARLES LEE, JUDGE
(Post-Conviction)

FOR THE APPELLANT:

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Assistant Public Defender
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FOR THE APPELLEE:

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Shelbyville, TN 37160

AFFIRMED

OPINION FILED: _____

JERRY SCOTT, PRESIDING JUDGE

OPINION

Pursuant to his pleas of guilty, the appellant, Joe Henry Angus, was convicted of two counts of aggravated robbery and one count of aggravated burglary. He received a total sentence of twenty years as a Range I standard offender. Almost one year later, he filed his petition for post-conviction relief, asserting that his guilty pleas were entered without the effective assistance of counsel. Counsel was appointed, and, after a full evidentiary hearing, the trial court denied relief. The petitioner now appeals from the denial of post-conviction relief, contending that the trial judge erred by finding that his counsel was effective.

"In post-conviction relief proceedings the petitioner has the burden of proving the allegations in his petition by a preponderance of the evidence." McBee v. State, 655 S.W.2d 191, 195 (Tenn.Crim.App. 1983). Furthermore, the factual findings of the trial court are conclusive on appeal unless the appellate court finds that the evidence preponderates against the findings. Butler v. State, 789 S.W.2d 898, 899 (Tenn. 1990). When the petitioner's post-conviction claim involves the Sixth Amendment right to effective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney were "within the range of competence demanded of attorneys in criminal cases." Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). To prevail on a claim of ineffective assistance of counsel, a petitioner must show that his or her counsel's representation fell below the objective standard of Baxter and, additionally, that this sub-standard representation prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). As applied to guilty pleas, the requirement of prejudice is established when the petitioner demonstrates that, but for counsel's errors, the petitioner would not have entered a guilty plea and would have insisted on going

to trial. Bankston v. State, 815 S.W.2d 213, 215 (Tenn.Crim.App. 1991); citing Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985).

The thrust of the appellant's complaint is that neither of his two court-appointed trial attorneys undertook an independent investigation of the evidence against him, and, therefore, his guilty plea was not intelligently entered. While independent investigation is a factor in deciding whether one has received competent representation, it is not the only factor. The appellant's attorneys conducted an adequate investigation and rendered competent advice. As the trial judge pointed out, the attorneys had been furnished all of the evidence that the state had against the appellant. Furthermore, the trial attorneys had the benefit of interviewing their client who told them that certain victims of the crimes could identify him. When this subject was broached at the post-conviction hearing, the appellant responded affirmatively that the victims could identify him as the one who pulled a pistol and robbed them. Moreover, both of the appellant's trial attorneys knew that the appellant had left Tennessee immediately after the crime and that he was arrested in Florida with a pistol, which was identified by one of the victims. One of the attorneys testified that she had talked to the counsel representing two of the appellant's co-defendants and learned that both were planning to implicate the appellant in the crimes. Additionally, both of the co-defendants' attorneys testified at the post-conviction hearing that their clients had indeed planned to "roll over on" the appellant, i.e., testify against him.

Although the appellant testified that he was not sure what he signed, both of his attorneys testified that they had read all of the contents of the guilty plea petition to the appellant before he signed it. The appellant testified that he entered a guilty plea to avoid the risk of a higher sentence and in exchange for the state's dismissal of several other charges of aggravated robbery. He said that he understood fully what he was doing and wanted to plead guilty at the

time that he did so. When asked whether it was only since he was in the penitentiary that he decided that he might be able to get a more favorable sentence, he merely responded, "[m]y chances are as good as none."

This Court has stated that when a petitioner pleads guilty, his ineffective assistance of counsel claim is only relevant to the degree that it shows his plea of guilty was not knowing and voluntary. See Housler v. State, 749 S.W.2d 758, 760 (Tenn.Crim.App. 1988). The record here fully supports the conclusion that the appellant knowingly and voluntarily entered his guilty plea after receiving competent advice from his attorneys.

Significantly, the appellant has never alleged that further investigation or better representation would have affected his decision to enter a guilty plea. To meet the prejudice requirements of Strickland, a post-conviction petitioner must demonstrate his readiness to forsake the certainty of a predetermined sentence in favor of the opportunity to have his case tried before a jury. See Mintz v. State, 808 S.W.2d 459, 462 (Tenn.Crim.App. 1990). The appellant readily admitted his desire to avoid the risk of receiving an even longer sentence than he was offered. The evidence does not preponderate against the findings of the trial judge that, even if the counsel was somehow deficient, the deficiency was of no significance.

In conclusion, it is apparent from the petition and the proof that the appellant's real grievance is the length of his sentence rather than the quality of the representation he received. Simply put, he made a decision to accept a longer sentence than he thought he deserved, avoiding the risk of receiving an even longer sentence and gaining the assurance that five other robbery charges would be dismissed.

The judgment denying post-conviction relief is affirmed.

JERRY SCOTT, PRESIDING JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

JOSEPH M. TIPTON, JUDGE