IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL 1996 SESSION

DAVID ROY GOINS,	*	C.C.A. # 03C01-9508-CC-00228
Appellant,	*	CLAIBORNE COUNTY
VS.	*	Hon. Lee Asbury, Judge
STATE OF TENNESSEE,	*	(Post-Conviction)
Appellee.	*	

For Appellant:

Gregory D. Smith
Attorney
One Public Sq., Suite 321
Clarksville, TN 37040
(on appeal)

Sherman Fetterman
Assistant Public Defender
P.O. Box 386
Tazewell, TN 37879
(on appeal and at hearing)

For Appellee:

Charles W. Burson
Attorney General & Reporter

Hunt S. Brown
Assistant Attorney General
Criminal Justice Division
450 James Robertson Parkway
Nashville, TN 37243-0493

Shayne Sexton
Asst. Dist. Attorney General
P.O. Box 455
Tazewell, TN 37879

OPINION FILED _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

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

> (1) whether the petitioner received the effective assistance of counsel; 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.

The petitioner was indicted for first degree murder, felony murder, especially aggravated robbery and especially aggravated kidnapping. The state sought the death penalty. After several days of trial, a mistrial was declared. Later, there was a negotiated plea agreement. The petitioner entered best interest pleas of guilt to one count of second degree murder and one count of especially aggravated robbery. The other charges were dismissed. The sentences were consecutive Range I sentences of twenty-five years each for an effective sentence of fifty years.

Just over one month later, the petitioner filed this petition for post-conviction relief. At the evidentiary hearing, the petitioner testified that (1) his judgment was affected at the plea hearing because he was on medication; (2) counsel did not explain the plea offer to him but rather pushed him into accepting the agreement; (3) he was misled into believing that he was pleading to one class A and one class B felony rather than two class A felonies; and that (4) his counsel told him to answer the questions so that the trial court would accept the plea else he would likely get the death penalty in a trial.

The two attorneys who represented the defendant at trial also testified at the hearing. They testified to the hundreds of hours of preparation they had spent on the defendant's case. They related that there was no urgency to accept the state's offer due to lack of preparation. The attorneys also testified that the defendant participated in many of the strategic decisions made prior to the beginning of the trial and acknowledged that the defendant had rejected a sentence offer of sixty years before the offer of the fifty-year sentence. They had recommended the plea to the defendant and had fully explained it to him. The attorney had some recollection that the defendant did, in fact, inquire about the possibility of the state offering class B and class A felonies as the bargain; they recalled that the state had rejected that proposal. The form used for the plea agreement does contain what appears to be a handwritten mark by both the class A and class B references within the form. The full document, however, specifies on the front and back that each of the offenses to which the defendant entered his best interest pleas of guilt were class A crimes. Thus, the record does not support the claim of the petitioner that he pled to only one class A felony.

The trial court did not file its findings in written form as required by statute. See Tenn. Code Ann. § 40-30-118. That omission, however, was completely harmless. At the conclusion of the evidentiary hearing, the trial court recited its findings, holding that the petitioner had received the effective assistance of counsel and that his plea had been voluntarily and knowingly made. The record, in our view, supports each conclusion.

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).

Here, each of the defense attorneys assigned to the trial testified that they were prepared for trial, that they fully advised the petitioner of the terms of the plea agreement, and that they had not forced the defendant to plead guilty. The trial court accredited their testimony. Clearly, the petitioner has not met his burden of showing that the evidence preponderates to the contrary.

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 he did not understand that he was entering a plea to two class A felonies rather than one class A and one class B felony. He claims that he was on medication at the time of the plea; he argues that his pleas were neither voluntarily nor knowingly made. We cannot agree.

The defense attorneys testified that the plea agreement was fully explained and that the petitioner was "coherent," "sharp," and "mentally alert." The plea hearing transcript and the plea form establish that the petitioner was fully advised of each of his rights as well as the particular terms of the plea agreement. The record also shows that the trial court had made the appropriate inquiries about the voluntariness of the pleas. There is no indication that the petitioner misunderstood. Thus, the petitioner is not entitled to relief on this issue.

Accordingly, the judgment is affirmed.

_____

Gary R. Wade, Judge

CONCUR:

_____
David H. Welles, Judge

_____
William M. Barker, Judge