IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1996 SESSION

NATHANIEL B. HENDERSON,	*	C.C.A. # 02C01-9507-CR-00192
Appellant,	*	SHELBY COUNTY
VS.	*	Hon. Bernie Weinman, Judge
STATE OF TENNESSEE,	*	(Post-Conviction)
Appellee.	*	

For Appellant:

Paula Skahan
Attorney at Law
140 North Third Street
Memphis, TN 38103

For Appellee:

Charles W. Burson
Attorney General & Reporter
450 James Robertson Parkway
Nashville, TN 37243-0493

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

Reginald R. Henderson
Asst. District Attorney General
201 Poplar Avenue
Third Floor
Memphis, TN 38103

OPINION FILED _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The petitioner, Nathaniel B. Henderson, appeals the trial court's denial of post-conviction relief. Two issues are presented review: whether the petitioner received the effective assistance of

counsel and whether ineffective assistance of counsel, combined with factors, rendered his guilty plea unknowing and involuntary.

We find no error and affirm the trial court's judgment.

The petitioner was indicted for murder during the attempted perpetration of robbery and first degree murder. On December 13, 19 pled guilty to second degree murder. Under a plea agreement, he was sentenced to fifty years as a Range III offender. Almost a year lat petitioner filed this petition for post-conviction relief, alleging was denied the effective assistance of counsel and that his plea was neither knowingly nor voluntarily made. Following an evidentiary he the trial court denied relief, issuing detailed findings of fact and conclusions of law.

The petitioner claims that he had appeared on the date of plea under the impression that the court would consider pretrial mot only. In fact, the trial was scheduled to begin. The petitioner in the trial judge that he wanted to change attorneys. The trial judge response to the request, revoked bail. The petitioner asserts that factors unduly influenced him to change his mind and decide to enter guilty plea.

I

In order to be granted relief on the grounds of ineffectiv assistance of counsel, the petitioner must establish that the advice or the services rendered were not within the range of competence dem of attorneys in criminal cases and that, but for his counsel's defic performance, the result of his trial would have been different. Str v. Washington, 466 U.S. 668, 693 (1984); Baxter v. Rose, 523 S.W.2d 936 (Tenn. 1975). This two-part standard, as it applies to guilty p is met when the petitioner establishes that, but for his counsel's e

he would not have pled guilty and would have insisted on going to tr

Hill v. Lockhart, 474 U.S. 52, 53 (1985).

At the post-conviction hearing, the petitioner testified t
his trial counsel was ineffective for several reasons. First, he as
she generally failed to prepare any type of defense for him, claimin
three days before the scheduled trial date, his attorney told him he
"have to get another lawyer [if he went to trial] ... [b]ecause she
have a defense for [him]." Next, petitioner asserts his trial couns
ineffective for failing to investigate his alibi defense. He testif
that his attorney failed to pursue this defense even though the peti
had informed her that he was with his wife at the time of the murder
Finally, petitioner asserts that his counsel failed to file a motion
suppress an incriminating statement he had given to police. The pet
testified that he had told his attorney that the police had threaten
and that one of the officers had assaulted him in order to obtain th
statement.

The petitioner's trial counsel testified that she would ha
received a continuance of the trial had the petitioner rejected the
offer by the state. She related that the petitioner had not been
cooperative with her in preparing for trial and "had not given [her]
information that would be useful to his defense." She also stated t
had discussions with the petitioner about the state's offer well in
of the trial date. She claimed that the petitioner agreed to accep
offer three days before his plea. Trial counsel also testified that
investigated the alibi defense but determined it was not viable beca
petitioner's wife gave inconsistent statements. She claimed that th
petitioner would not give her any reliable information as to the
whereabouts of possible alibi witnesses. Counsel claimed that she w
have sought a hearing on a motion to suppress had the petitioner sou
one. She testified that the first time she had heard the petitioner
anyone had struck him or threatened him in an effort to extract a st
was at the post-conviction hearing.

The trial court found no merit to any of the claims. The burden, of course, is on the petitioner to show that the evidence preponderates against the findings of the trial judge. Clenny v. St 576 S.W.2d 12, 14 (Tenn. Crim. App. 1978). Otherwise, findings of f made by the trial court are binding on this court. Graves v. State, S.W.2d 603, 604 (Tenn. Crim. App. 1973). Here, the trial court accr the testimony of trial counsel and concluded that the petitioner hac to demonstrate that he would not have entered his guilty plea were i for the deficient performance of his counsel. Hill v. Lockhart, 474 at 53. We agree. In short, the evidence does not preponderate agai findings of the trial court.

II

The petitioner also claims that his guilty plea was neithe knowing nor voluntary. He argues that his counsel's ineffectiveness combined with various occurrences on the day of his guilty plea, lef with no choice other than to plead guilty. He specifically points o he was scheduled for trial on the date of his court appearance. The petitioner claims that the revocation of bail, when he asked for per to hire new counsel, and trial counsel's advice that he had no defer unduly influenced him to enter into the plea agreement.

The overriding determination on the validity of a guilty p rests upon whether it was knowingly and voluntarily entered. State Neal, 810 S.W.2d 131, 139-140 (Tenn. 1991). If the proof establishe the petitioner was aware of his constitutional rights, he is entitle relief. Johnson v. State, 834 S.W.2d 922, 926 (Tenn. 1992). "[A] p not 'voluntary' if it is the product of '[i]gnorance, incomprehensio coercion, terror, inducements, [or] subtle or blatant threats ....'" Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993)(quoting Boyki Alabama, 395 U.S. 238, 242-43 (1969)). Revocation of bail because t petitioner sought new counsel or a delay in trial would not necessar render a plea involuntary. Courts must consider all of the surround

circumstances. Here, the petitioner testified at the submission hea that his plea was knowing and voluntary. The trial court so found. record establishes that the petitioner sought the advice of his wife mother before entering his plea. The proof in the record simply doe preponderate against the finding of the trial court.

Accordingly, we affirm the judgment of the trial court.

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Gary R. Wade, Judge

CONCUR:

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Joe B. Jones, Presiding Judge

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Jerry L. Smith, Judge