

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

AUGUST SESSION, 1996

FILED
October 29, 1996
Cecil W. Crowson
Appellate Court Clerk

NEIL E. BRIDGES,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

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C.C.A. NO. 01001991 CR 00368

DAVIDSON COUNTY

HON. THOMAS H. SHRIVER
JUDGE

(Post-Conviction)

ON APPEAL FROM THE JUDGMENT OF THE
CRIMINAL COURT OF DAVIDSON COUNTY

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. The Defendant appeals from an order of the trial court denying him post-conviction relief. The Defendant presents one issue for review: that he was incompetent to enter a guilty plea. We affirm the action of the trial court.

We will first briefly review the facts underlying the conviction. On April 30, 1991, a call was made to 911 in Nashville, Tennessee about a disturbance at a residence. The police arrived at the home of the victim, who may have been the Defendant's girlfriend, although it is unclear from the record. The Defendant was breaking up with his girlfriend and was apparently intoxicated. When police officers arrived at the scene, a woman directed them to a man in her dining room who had a gun. The Defendant emerged and aimed a pistol at the officer's head. He attempted to pull the trigger of the gun, but the officer put his finger in the hammer of the gun to prevent it from firing. The Defendant was shot twice by another arresting officer and received treatment for his injuries.

We also review the procedural history of this case. The Defendant was indicted for the burglary and kidnapping of the victim and for the attempted murder of the police officer. Pursuant to a plea agreement, on October 3, 1991, the Defendant attempted to plead guilty to aggravated assault in exchange for a six-year sentence to be served at one-hundred percent. The trial court determined that the sentence was not authorized and the proceedings were

postponed to renegotiate the sentence. In the interim, Defendant's counsel submitted a motion for a psychiatric examination and the prosecutor obtained a superseding indictment. The trial court granted the motion to evaluate the Defendant.

The Defendant received an outpatient evaluation from DeDe Wallace Mental Health Center, which referred him to the Middle Tennessee Mental Health Institute's (MTMHI) forensic unit for a thirty-day inpatient evaluation to assess his competency to enter a plea. The evaluating team at MTMHI concluded that he was competent to enter a plea. On March 5, 1992, the Defendant pled guilty to aggravated assault and was sentenced, out of his range, as a Range III offender to fourteen years at forty-five percent.

In December, 1993, the Defendant filed a petition for post-conviction relief. Counsel was appointed, and an amended petition for post-conviction relief was filed in January, 1995. In his post-conviction petition, he alleged that he did not knowingly and voluntarily enter into his guilty plea and did not understand the collateral effects of the plea. The trial court conducted an evidentiary hearing on the merits. The Defendant's petition was denied, and he appeals to this court.

In a post-conviction proceeding, the petitioner must prove the allegations in the petition by a preponderance of the evidence. Davis v. State, 912 S.W.2d 689, (Tenn. 1995); Adkins v. State, 911 S.W.2d 334, 341 (Tenn. Crim. App. 1994), perm. to appeal dismissed, id. (Tenn. 1995). In appellate review of post-conviction proceedings, the trial court's findings of fact are conclusive unless the evidence in the record preponderates against the findings. Cooper v. State, 849

S.W.2d 744, 746 (Tenn. 1993); Butler v. State, 789 S.W.2d 898, 899 (Tenn. 1990). Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact, not this court. State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1987). Nor may this court reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

In his appeal, the Defendant asserts that he was incompetent to enter a guilty plea. If insane or mentally incompetent, a defendant cannot be required to plead to an offense, be tried, convicted or sentenced. Godinez v. Moran, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993); Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 148 (1966); Berndt v. State, 733 S.W.2d 119 (Tenn. Crim. App.), perm. to appeal dismissed, id. (Tenn. 1987).

The standard for competency when pleading guilty to an offense is the same as that to stand trial. Godinez, 113 S.Ct. at 2686. Competency requires that the Defendant have a reasonable degree of rational and factual understanding of the proceedings. Id. at 2685. Furthermore, because the accused waives constitutional rights when entering a guilty plea, such waiver must be knowing, understanding and voluntary. Id. at 2687; State v. Turner, 919 S.W.2d 346, 353 (Tenn. Crim. App. 1995). The totality of the circumstances determines whether a guilty plea was knowingly, understandingly and voluntarily entered. Turner, 919 S.W.2d at 353.

In the case sub judice, the Defendant's counsel requested a psychiatric evaluation of the Defendant's competency to stand trial. The trial court ordered the evaluation, in compliance with Tennessee Code Annotated section 33-7-301. He underwent an extensive inpatient evaluation for nearly 30 days.¹ Upon the unanimous agreement of the treatment team, they determined he was competent to stand trial. Before entering his guilty plea, the trial court followed the guidelines in Rule 11(c), Tennessee Rules of Criminal Procedure, informing the Defendant of his constitutional rights and the consequences of the plea. See also State v. Mackey, 553 S.W.2d 337, 341 (Tenn. 1977).

At the post-conviction hearing, the Defendant testified that he had no recollection of pleading guilty, signing the form or speaking with the trial judge. His current psychiatrist, Dr. Pruitt, testified to a litany of past diagnoses made of the Defendant. Dr. Pruitt testified that the Defendant likely has some form of schizophrenia. He stated that, based on the Defendant's prior history of mental disorder and particularly because he demonstrated some thought disturbances, the Defendant was likely incompetent when he entered the guilty plea. However, Dr. Pruitt did not have contact with the Defendant until the fall of 1994, approximately one and a half years after the March 5, 1992 plea.

The State produced the supervising psychiatrist, Dr. White, and the psychologist, Dr. Azimi, who tested the Defendant during his evaluation at MTMHI. Dr. White testified that he did not observe overt signs of nor did he diagnose the Defendant with a mental illness. He diagnosed the Defendant only

¹ The Defendant was returned to jail four or five days early after concerns arose that he intended to harm some of the forensic unit staff.

with substance abuse and borderline intellectual functioning. While at MTMHI, Dr. White continued the Defendant on maintenance doses of antidepressant and anti-anxiety medications. He reported no observations by the evaluation team of behavior associated with a thought disorder. Dr. Azimi testified that he tested the Defendant over a three-day period. One of the tests was invalid because there was evidence that the Defendant reported a gross exaggeration of symptoms.

The March 5, 1992 record reveals no overt statements or actions on the part of the Defendant that suggest he was incompetent at the time he pled guilty. He had an evaluation just prior to entering the plea that determined he was competent to stand trial. Although there is evidence of a long history of psychiatric problems, the presence of such a history does not, standing alone, render an accused incompetent to enter a plea. What is relevant is the Defendant's ability, at the time of entering the plea, to have a reasonable capacity to understand the proceedings and to consult with counsel.

There is evidence in the record that the Defendant discussed the plea with counsel. Defense counsel testified that before the proceedings, the Defendant was concerned with his girlfriend's feelings about the plea and that he changed his mind several times. That is some indication that he contemplated the nature and consequences of his actions.

Furthermore, the Defendant evidenced no symptoms or actions to suggest he was impaired when he entered his plea. The trial court adequately informed him about the waiver of his constitutional rights upon taking his guilty plea. In assessing the circumstances at the time the plea was accepted, the record

certainly supports a finding that the Defendant knowingly, understandingly and voluntarily entered his plea.

The trial court evaluated the evidence and weighed conflicting testimony and the credibility of the witnesses and determined that the Defendant had failed to prove that he was incompetent to enter his guilty plea. Because the trial judge's findings are supported by the record, we will not disturb his judgment on appeal. The judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

JOSEPH M. TIPTON, JUDGE