IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

AUGUST SESSION, 1996

LEMUEL S. NELSON,	)	**C.C.A. NO. 02C01-9510-CC-00294**
	)	
Appellant,	)	
	)	
	)	**SHELBY COUNTY**
VS.	)	
	)	**HON. BERNIE WEINMAN**
STATE OF TENNESSEE,	)	**JUDGE**
	)	
Appellee.	)	**(Post-conviction Relief)**

FOR THE APPELLANT:

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(on appeal)

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OPINION FILED _____

AFFIRMED

JERRY L. SMITH, JUDGE

OPINION

Appellant Lemuel S. Nelson appeals the trial court's denial of his petition for post-conviction relief. He presents the following issues for review: (1) whether the trial court erred in finding that his guilty plea was knowing and voluntary; and (2) whether the trial court erred in finding that his trial counsel rendered effective assistance.

After a review of the record, we affirm the judgment of the trial court.

I. FACTUAL BACKGROUND

On October 18, 1993, Appellant pled guilty to nine counts of aggravated robbery, two counts of theft of property over $1000, and one count of attempted aggravated robbery. As provided for in the plea agreement, Appellant received an effective sentence of seventeen years in the Tennessee Department of Correction.

On February 1, 1995, Appellant filed a petition for post-conviction relief, alleging an involuntary guilty plea and ineffective assistance of counsel at trial. Following a hearing, the trial court denied Appellant's petition, finding that the guilty plea was knowing and voluntary and that trial counsel had rendered effective assistance.

II. POST-CONVICTION RELIEF

Appellant alleges that the trial court erred in finding that his guilty plea was knowing and voluntary and that his trial counsel rendered effective representation. In post-conviction proceedings, the petitioner has the burden of proving the claims raised by a preponderance of the evidence. Tidwell v. State, 922 S.W.2d 497, 500 (Tenn. 1996); Wade v. State, 914 S.W.2d 97, 101 (Tenn. Crim. App. 1995). Findings of fact made by the trial court are conclusive on appeal unless the evidence preponderates against the judgment. Cooper v. State, 849 S.W.2d 744, 746 (Tenn. 1993); Butler v. State, 789 S.W.2d 898, 899 (Tenn.1990).

A. PLEA

Appellant first argues that his guilty plea was involuntary. At the post-conviction hearing, he testified that he was scared and intimidated by the trial court. He further testified that the trial court threatened him with a sentence of over one hundred years if he proceeded to trial. Appellant stated that he entered a guilty plea because "[he] had no other choice." However, nothing in the record substantiates Appellant's claim of undue pressure. On the contrary, trial counsel testified that it was Appellant who made the decision to plead guilty after ongoing discussions regarding the plea agreement. At the conclusion of the post-conviction hearing, the trial court found that Appellant freely and voluntarily entered his guilty pleas and, furthermore, explicitly found that he was not threatened concerning his sentence.

When reviewing the entry of a guilty plea, the overriding concern is whether the plea is knowingly and voluntarily made. Woods v. State, 928 S.W.2d 52, 55

(Tenn. Crim. App. 1996). However, a petitioner's uncorroborated testimony is insufficient to carry the necessary burden of proof in a post-conviction petition. State v. Kerley, 820 S.W.2d 753, 757 (Tenn. Crim. App. 1991). Here, the record contains no evidence of threats or undue pressure placed upon Appellant nor any corroboration of his claim. As stated previously, the factual findings of the trial court are conclusive on appeal unless the evidence preponderates against those findings. See Cooper, 849 S.W.2d at 746. After a review of the record, we conclude that the evidence fails to preponderate against the factual findings of the trial court. Appellant is not entitled to relief on this issue.

B. EFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Appellant also argues that his trial counsel rendered ineffective assistance. Most significantly, Appellant maintains that his trial counsel, knowing that certain incriminating statements contained forged signatures, failed to take any pretrial action to suppress the statements. Trial counsel testified that, in his opinion, the issue of whether the signatures were forgeries was a factual question for the jury to determine. Consequently, trial counsel made preparations to attack the statements during trial rather than by means of a motion to suppress. Appellant argues that he was never informed of this plan. At the conclusion of the post-conviction hearing, the trial court made the following findings in a written order:

> [Appellant's] attorney thoroughly investigated the case and was prepared to try the case if [Appellant] desired to proceed with the trial. And the attorney was prepared to challenge the authenticity of the alleged confessions.
>
> The Court further finds that the attorney had placed the handwriting expert on notice and in the event she was needed as a witness, he was prepared to have her come to Memphis to testify.

> It would appear that the defense attorney negotiated an extremely favorable guilty plea settlement for his client. . . . The Court finds that the advice given and the services rendered by [Appellant's] counsel were within the range of competency demanded by an attorney in a criminal case and [the] representation of [Appellant] at his guilty plea complied with the requirements set out by the Supreme Court of Tennessee in the case of Baxter v. Rose.

When an appeal challenges the effective assistance of counsel, the appellant has the burden of establishing (1) deficient representation and (2) prejudice resulting from that deficiency. Strickland v. Washington, 466 U.S. 668, 686 (1984); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn.1975). Deficient representation occurs when counsel provides assistance that falls below the range of competence demanded of criminal attorneys. Bankston v. State, 815 S.W.2d 213, 215 (Tenn. Crim. App. 1991). Prejudice is the reasonable likelihood that, but for deficient representation, the outcome of the proceedings would have been different. Overton v. State, 874 S.W.2d 6, 11 (Tenn. 1994). On review, there is a strong presumption of satisfactory representation. Barr v. State, 910 S.W.2d 462, 464 (Tenn. Crim. App. 1995).

The primary thrust of Appellant's ineffective assistance claim is that his trial counsel was deficient in failing to attack the validity of the incriminating statements by means of a pretrial motion. However, allegations relating to matters of trial strategy or tactics cannot provide a basis for a claim of ineffective assistance of counsel. Taylor v. State, 814 S.W.2d 374, 378 (Tenn Crim. App. 1991). Trial counsel testified, and the trial court specifically found, that he was prepared to challenge the authenticity of the signatures at trial. We will not

employ hindsight to second-guess trial counsel's decision on this point. See Cox v. State, 880 S.W.2d 713, 718 (Tenn. Crim. App. 1994).

Finally, trial counsel testified that there were ongoing discussions with Appellant about both the guilty plea and the preparation for trial. Having heard first-hand Appellant's testimony and that of his trial counsel, the trial court determined that trial counsel's testimony was the accurate account of what acually transpired. We are bound to affirm that determination unless the evidence in the record preponderates against the trial court's findings. See Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990). After a review of the record, we believe that Appellant has failed to make an adequate showing in support of his claim of ineffective assistance. Thus, we conclude that Appellant is not entitled to relief on this issue.

Accordingly, the judgment of the trial court is affirm.

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JERRY L. SMITH, JUDGE

CONCUR:

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GARY R. WADE, JUDGE

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WILLIAM M. BARKER, JUDGE