IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1997 SESSION

FILED

December 17, 1997

Cecil W. Crowson
Appellate Court Clerk

STEVEN D. HARRIS	)	
	)	
Appellant,	)	No. 01C01-9611-CR- 00489
	)	
	)	Davidson County
v.	)	
	)	Honorable Thomas H. Shriver, Judge
	)	
STATE OF TENNESSEE,	)	(Post-Conviction)
	)	
Appellee.	)	

For the Appellant:

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For the Appellee:

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OPINION FILED:_____

AFFIRMED

Joseph M. Tipton
Judge

O P I N I O N

The petitioner, Steven D. Harris, appeals as of right from the judgment of the Criminal Court for Davidson County denying him post-conviction relief from his 1995 convictions upon guilty pleas for second degree murder and attempted first degree murder, Class A felonies. He received consecutive fifteen-year sentences. The gist of the petitioner's claim in this appeal is that his pleas were unknowing and involuntary because of the ineffective assistance of counsel that induced him to accept the plea offer. We disagree.

The petitioner was originally charged with first degree murder and attempt to commit first degree murder. He was tried, but a mistrial was ordered when it was discovered that jurors had gone to the scene of the events in issue. On the day selected for the retrial, the petitioner entered guilty pleas pursuant to an agreement with the state. At that hearing, the state recounted the facts upon which the pleas were based.

The petitioner had visited his girlfriend who had a child. The victims, Ira Panky and Christopher Holland, who was supposedly the father of the girlfriend's child, had arrived to see the child. After a few words were spoken, the victims left, as did the petitioner. The victims returned later that evening. Unknown to the victims, the petitioner also had returned, with a gun. While the victims were standing unarmed on the street talking to a third person, the petitioner came through the backyard up to the front sidewalk, catching both victims off guard. The petitioner fired shots at Mr. Holland and then gave chase to Mr. Panky. As he ran down the street, he shot Mr. Panky in the back. Mr. Panky died as a result of the gunshot wound. Mr. Holland was shot in the face but survived, although he had a lengthy stay in the hospital.

The specifics of the petitioner's arguments in this appeal are that his trial attorney failed to let him know that the sentences were consecutive, failed to pursue a continuance in order for the petitioner to hire new counsel and failed to advise the petitioner that he could change his mind regarding the agreement anytime during the court proceeding. At the post-conviction evidentiary hearing, the petitioner testified that he did not want to plead guilty but that his attorney told him that the state would be willing to accept a guilty plea to the offenses with a fifteen-year sentence to be imposed on both offenses. The petitioner said that he told his attorney that he wanted to hire new counsel, but on the morning of the retrial, his attorney stated that such was not an option because if he, the attorney, were relieved, the trial court would try the petitioner on that day anyway.

The petitioner stated that he was unaware through the whole process that he was receiving an effective sentence of thirty years in the penitentiary, even though he acknowledged that the guilty plea hearing transcript reflected that the trial court explained the thirty-year sentence to him. In this respect, the petitioner testified that he believed that after he signed the guilty plea petition and appeared in court, it was too late for him to change his mind. He also explained that he did not understand "legalese," such as the meaning of "consecutive."

The petitioner's trial attorney testified that the state had originally offered to recommend a twenty-five-year sentence subject to the approval of the families of the victims and that the petitioner was willing to accept such an offer. However, the families rejected the reduced sentence. The attorney stated that the petitioner and several witnesses were called to testify for the defense at the first trial. He said that at the conclusion of the proof, a mistrial was declared when jurors revealed that they had gone to the scene of the crime without authorization. He also stated that after the

mistrial, he discovered that the jury was prepared to return a verdict of guilt on the first degree murder charge. He stated that he advised the petitioner of this fact.

The trial attorney testified that pending the second trial, he was made aware that the petitioner was seeking to hire another attorney. He said that he spoke to the other attorney and offered him all of the petitioner's files. However, the other attorney was never retained.

The trial attorney stated that he undertook preparations for the second trial. Also, the state offered to settle the charges for thirty-five years. The attorney said that he spoke with the petitioner several times about the offer and that the petitioner understood what the offer involved, expressing no confusion or misunderstanding about its terms. He said that on the day of the second trial, the state reduced its offer to thirty years and the petitioner stated that he was going to plead guilty.

The petitioner signed a petition to enter a plea of guilty that reflected that the fifteen-year sentences were consecutive. The transcript of the guilty plea hearing reflects that the petitioner stated that he understood the terms of the plea agreement and that his trial attorney had gone over the terms with him. Further, the trial court specifically stated that the sentences totaled thirty years. The petitioner asked the trial court about the effect his guilty pleas would have on the "three strikes and you're out" law, which the trial court explained.

At the evidentiary hearing, the trial court held that the petitioner was not entitled to relief. From the testimony and the transcript of the guilty pleas, it found that the petitioner had asked some intelligent questions, that the trial court explained to the petitioner the various possibilities about how long he would have to serve on the sentence, and that the petitioner made his own decision to plead guilty. It concluded

that the petitioner entered knowing and intelligent guilty pleas and that there was no ineffective assistance of counsel. The record indicates that the trial court discredited the bulk of the petitioner's testimony as an attempt to get out of the prior agreement.

Under the Sixth Amendment, when a claim of ineffective assistance of counsel is made, the burden is upon the petitioner to show (1) that counsel's performance was deficient and (2) that the deficiency was prejudicial. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). In the context of a complaint about guilty pleas resulting from the ineffective assistance of counsel, prejudice is shown by demonstrating a reasonable probability that, but for counsel's misadvice and errors, the petitioner would not have pled guilty and would have insisted upon going to trial. See Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985); Bankston v. State, 815 S.W.2d 213, 215 (Tenn. Crim. App. 1991).

We believe that the petitioner's claims were not proven at the evidentiary hearing. To the contrary, the record fully supports the trial court's findings and conclusions. Primarily, the transcript of the guilty plea hearing reflects a full understanding and awareness by the petitioner of the particulars of the plea agreement, of his various trial related constitutional rights, and of the fact that his effective sentence would be thirty years. It also reflects his willingness to plead guilty and his understanding of the ramifications flowing from his guilty pleas. As the United States Supreme Court has noted, a petitioner's testimony at a guilty plea hearing "constitutes a formidable barrier" in any subsequent collateral proceeding because "solemn declarations in open court carry a strong presumption of verity." Blackledge v. Allison, 431 U.S. 63, 73, 97 S. Ct. 1621, 1629 (1977). Nothing in the record before us dispels the reliability of the petitioner's testimony at his guilty plea hearing.

Moreover, the petitioner's testimony at the guilty plea hearing is fully consistent with his trial attorney's testimony at the evidentiary hearing relative to the petitioner's willingness to accept the plea offer and understanding of its ramifications. We see nothing to reflect that the attorney misadvised the petitioner or that deficient performance by the attorney induced the petitioner to enter guilty pleas that he would not have otherwise agreed to enter.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

_____
Joseph M. Tipton, Judge

CONCUR:

_____
John H. Peay, Judge

_____
David H. Welles, Judge