

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1999 SESSION

JOHN D. BARRON,
Appellant,
VS.
STATE OF TENNESSEE,
Appellee.

* C.C.A. #M199800031CCAR3PC
* DAVIDSON COUNTY
* Hon. Seth Norman, Judge
* (Post-Conviction)
*

FILED
December 29, 1999
Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant:

Paul J. Bruno, Attorney
Washington Square Building
222 Second Avenue North
Suite 350M
Nashville, TN 37201

For Appellee:

Paul G. Summers
Attorney General and Reporter

Mark E. Davidson
Assistant Attorney General
Criminal Justice Division
425 Fifth Avenue North
Nashville, TN 37243-0493

T. J. Haycox
Assistant District Attorney General
Washington Square Building, Suite 500
222 Second Avenue North
Nashville, TN 37201-1649

OPINION FILED: _____

AFFIRMED

GARY R. WADE, PRESIDING JUDGE

OPINION

The petitioner, John D. Barron, appeals the trial court's denial of his petition for post-conviction relief. The single issue presented for review is whether the petitioner's plea of guilt to attempted aggravated sexual battery was knowingly and voluntarily made.

We find no error and affirm the judgment of the trial court.

On August 14, 1997, the petitioner was charged with aggravated sexual battery. One and one-half months later, the petitioner entered an agreement whereby he pled guilty to attempted aggravated sexual battery. The trial court imposed a Range I, four-year sentence to be served in a community corrections program. Afterward, the state issued a warrant for the petitioner, alleging that he had violated the terms of his release. In February of 1998, the trial court ordered the sentence to be served in the Department of Correction. Approximately one month later, the petitioner filed this petition for post-conviction relief alleging newly discovered evidence, ineffective assistance of counsel, and other grounds. Afterward, counsel was appointed for the petitioner and an amended petition was filed wherein the petitioner claimed that his plea was neither knowingly nor voluntarily entered. More specifically, the petitioner complained that at the time of the plea, "he was not receiving necessary medication for his mental problems." The petitioner also alleged that he "incorrectly believed that if he pled guilty, he would be able to get out of jail, investigate his case, and present his case to the court."

At the evidentiary hearing, the petitioner testified that just prior to his arrest, he had been hospitalized for thirty days in Henderson, Nevada, for treatment of depression and a bipolar disorder. He was prescribed Prozac, Trazodone, and

Trilafon. The petitioner testified that from the time of his arrest on August 14, 1997, until his plea of guilt one and one-half months later, he did not receive any of his prescribed medications. He claimed that he was not aware of the elements of the offense of attempted aggravated sexual battery and did not realize that the state had the burden to prove his guilt. He maintained that he was uncertain as to whether the charge was a misdemeanor or a felony. He stated that he was unable to make bail and that he pled guilty "just to get out." He contended that he did not recall anything about the guilty plea proceeding. When asked if he would have pled guilty had he been taking his prescription medication at the time, the petitioner answered, "Probably not."

On cross-examination, the petitioner conceded that he had been "in and out of jail for twenty-two years.... He acknowledged that he had pled guilty on other occasions and understood that when he did so, he would receive a sentence. He explained, however, that he "thought it was a bunch of b.s. to be honest with you...." The petitioner acknowledged that he entered an information agreement, admitting his guilt, within seven days of his arrest. The petitioner acknowledged that he signed a guilty plea petition freely and voluntarily and had plenty of time to discuss its content with his attorney.

The petitioner's trial counsel also testified at the evidentiary hearing. She recalled discussing the nature of the charges against the petitioner and his various options, including the execution of an information agreement which bypassed action on the part of the grand jury. Although trial counsel was unaware at the time of the plea that the petitioner had been prescribed medication, she insisted that the petitioner understood his various rights and alternatives. She was aware that the petitioner was bipolar and had taken Lithium at sometime in his past.

Trial counsel recalled that the petitioner did not deny the charges against him, explaining that he was intoxicated and could not recall what had happened.

The trial court found that the petitioner had not been denied his right to the effective assistance of counsel. While acknowledging that the petitioner had been hospitalized in Nevada some eight months before his arrest, the trial court accredited the testimony of trial counsel that the petitioner "clearly understood what he was doing" at the time of the plea. The trial court observed that the transcript of the guilty plea established that the petitioner had acknowledged that he was "taking [his] medication" at the time of his plea.

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 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. The plea must represent a "voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25 (1970). If the proof establishes that the petitioner was aware of his constitutional rights, he is entitled to no relief. Johnson v. State, 834 S.W.2d 922, 926 (Tenn. 1992). "[A] plea is not voluntary if it is a product of 'ignorance, incomprehension, coercion, terror, inducements, [or] subtle or blatant threats.'" Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993) (quoting Boykin, 395 U.S. at 242-43).

Under our statutory law, the petitioner bears the burden of proving his post-conviction allegations by clear and convincing evidence. Tenn. Code Ann. §

40-30-210(f). On appeal, the findings of fact made by the trial court are conclusive and will not be disturbed unless the evidence contained in the record preponderates against them. Brooks v. State, 756 S.W.2d 288, 289 (Tenn. Crim. App. 1988). The burden is on the petitioner to show that the evidence preponderated against those findings. Clenny v. State, 576 S.W.2d 12, 14 (Tenn. Crim. App. 1978). The credibility of the witnesses and the weight and value to be afforded their testimony are questions to be resolved by the trial court. Bates v. State, 973 S.W.2d 615 (Tenn. Crim. App. 1997).

Here, the trial court accredited the testimony of trial counsel who unconditionally asserted that the petitioner understood the nature of the charges against him, the various options available, and the consequences of a guilty plea. The trial court further observed that the petitioner made no complaints about the voluntariness of his plea until shortly after his participation in the community corrections program was terminated. Because the trial court saw and heard the testimony of the witnesses firsthand, reviewed the transcript of the hearing on the guilty plea, and ultimately determined that the plea was knowingly and voluntarily made, the reasons for the denial of post-conviction relief are well-founded. In our view, the evidence in this record does not preponderate against the findings of the trial court and the petitioner has been unable to demonstrate by clear and convincing evidence that an untreated mental condition at the time of the disposition of his case rendered his guilty plea as either unknowing or involuntary.

Accordingly, the judgment is affirmed.

Gary R. Wade, Presiding Judge

CONCUR:

John H. Peay, Judge

Norma McGee Ogle, Judge