

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 2, 2023

FILED

06/21/2023

Clerk of the
Appellate Courts

MARTINESS HENDERSON v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 15-00211 Paula L. Skahan, Judge

No. W2022-01081-CCA-R3-PC

Petitioner, Martiness Henderson, appeals from the Shelby County Criminal Court's order denying his petition for post-conviction relief, in which he alleged that he received the ineffective assistance of counsel at trial. Having reviewed the entire record and the briefs of the parties, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and KYLE A. HIXSON, JJ., joined.

Shae Atkinson, Memphis, Tennessee, for the appellant, Martiness Henderson.

Jonathan Skrmetti, Attorney General and Reporter; Richard D. Douglas, Senior Assistant Attorney General; Steve Mulroy, District Attorney General; and Regina Lucreziano, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

Petitioner was convicted in the Shelby County Criminal Court of first degree felony murder and received an automatic life sentence. *State v. Martiness Henderson*, No. W2016-00911-CCA-R3-CD, 2018 WL 1100972, at *1 (Tenn. Crim. App. Feb. 26, 2018), *no perm. app. filed*. Petitioner appealed, arguing the jury selection process was improper and his sentence was unconstitutional. *Id.* A panel of this Court held that the trial court committed reversible error during jury selection and vacated Petitioner's conviction. *Id.*

Following remand, Petitioner was again convicted of felony murder and sentenced to life without the possibility of parole. *State v. Martiness Henderson*, No. W2018-02015-CCA-R3-CD, 2019 WL 4341371, at *1 (Tenn. Crim. App. Sept. 12, 2019), *perm. app. denied* (Tenn. Dec. 10, 2019). The facts underlying Petitioner’s conviction were summarized in the opinion from that appeal. *Id.* at *1-3.

On March 9, 2014, then 17-year-old Petitioner and his two co-defendants contacted the victim and arranged to meet him at the Sycamore Lake Apartments in Shelby County with the intent to steal the victim’s 2006 Ford Mustang, which the victim had listed on Craigslist. *Id.* at *1. Before the victim arrived, Petitioner exited his co-defendant’s vehicle and waited out of sight. *Id.* When the victim arrived, the co-defendants test-drove the Mustang. *Id.* After they returned and while the co-defendants and the victim were looking under the hood of the victim’s car, Petitioner approached and fired multiple shots at the victim. *Id.* Petitioner and his co-defendants then fled the scene in the Mustang. *Id.*

Several residents of the apartment complex heard the gunshots, including the victim’s fiancée, who went outside and found the victim lying in the parking lot and his Mustang missing. *Id.* Memphis Police Department Officer Michael Huff responded to the scene after hearing “about five to six shots” while preparing for his shift at a nearby precinct. *Id.* at *2. He arrived and found the unresponsive victim on the ground. *Id.* Officers found messages on the victim’s phone about Petitioner’s interest in viewing the Mustang. *Id.* Police obtained a search warrant for the co-defendant’s vehicle but did not find any property belonging to Petitioner in the vehicle. *Id.* The following morning, an officer observed a Mustang matching the description of the stolen vehicle and pursued it into an apartment complex, where the occupants exited the car and fled on foot. *Id.* At trial, the parties stipulated that Petitioner’s fingerprints were found on the outside driver’s door of the vehicle. *Id.* On March 11, 2014, Petitioner gave a statement to police. *Id.* at *3. Petitioner initially denied any involvement but ultimately admitted to shooting the victim. *Id.*

Petitioner appealed, arguing that the trial court’s imposition of a life sentence for a juvenile offender violated the Eighth Amendment prohibition against cruel and unusual punishment. A panel of this Court affirmed Petitioner’s conviction, concluding it was bound, under the doctrine of the law of the case, by the previous panel’s determination that Petitioner’s life sentence was constitutional. *Id.* at *4.

Petitioner subsequently filed a timely pro se petition for post-conviction relief, and the post-conviction court appointed counsel. Appointed counsel filed an amended petition, asserting that trial counsel was ineffective for failing to: review discovery with Petitioner; meet with and effectively communicate with Petitioner; adequately investigate and

interview witnesses; and develop a sound trial strategy. After an evidentiary hearing, the post-conviction court denied relief.

At the post-conviction hearing, trial counsel testified that he had been practicing law for 21 years and that his practice was primarily criminal defense. Trial counsel recalled that he received discovery from the State in Petitioner's case and reviewed it with Petitioner. Trial counsel testified that he would have met with Petitioner at the jail "on occasion" and at the courthouse. Counsel explained, "[In] 2018, 2017 when this was going on, cases here in Shelby County [we]re traditionally set every 30 days and we were still able to meet and talk to the client every time that he would be in court, make sure that he didn't have any new questions, new information that he wanted to relay to us or needed anything from us." Trial counsel testified that he explained the elements of the offense and the State's burden of proof to Petitioner, and Petitioner indicated he understood.

Trial counsel testified that Petitioner's case "was a really difficult case" given the strength of the State's evidence, which included Petitioner's confession, as well as confessions by both co-defendants, and Petitioner's fingerprints on the stolen car. Counsel said Petitioner was unable to provide him with any information to dispute the charges against Petitioner. Trial counsel testified that "[t]here was very little to work with." Counsel did not "remember there being anything to investigate." He also did not remember whether he filed a motion to suppress Petitioner's statement to police. Counsel testified that he did not receive any plea offers from the State but that he would have relayed any offers to Petitioner. Trial counsel testified that he "absolutely" discussed with Petitioner his decision whether to testify at trial.

Trial counsel also represented Petitioner in his first trial. He testified that nothing changed with respect to his trial strategy between the first and second trials and that in the second trial, the State "ha[d] a second chance to go back and fix any problems they may have had" in the first trial but, he testified, "I don't remember the State having any problems in this case."

Petitioner testified that he first met trial counsel in "like March of 2014." He testified that he never received a copy of his discovery materials from trial counsel. He agreed that trial counsel met with him to discuss the offense charged against him. Petitioner estimated that trial counsel met with him "two or three times" between 2014 and 2016. When asked what trial counsel discussed with him in preparation for trial, Petitioner testified, "He was just telling me that I had a good chance of getting back in court, because I was a juvenile when I got arrested. But other than that, that was it." When asked whether trial counsel discussed whether to testify at trial, Petitioner answered, "Not really." Petitioner said, "I never wanted to testify in the . . . second trial, but the first trial I did want to testify." Petitioner recalled discussing his statement to police with trial counsel.

Following the hearing, the post-conviction court entered a written order denying relief. The court concluded that Petitioner failed to prove that trial counsel's performance was deficient or that Petitioner was prejudiced by any alleged deficiencies. Petitioner appeals.

Analysis

Petitioner contends that trial counsel provided ineffective assistance by failing to review discovery with him "so he could understand the evidence against him and help in his own defense." He also contends that trial counsel was ineffective by failing to "meet with him as necessary." The State asserts that the record supports the post-conviction court's denial of relief. We agree with the State.

Post-conviction relief is only warranted when a petitioner establishes that his or her conviction or sentence is void or voidable because of an abridgement of a constitutional right. T.C.A. § 40-30-103. A post-conviction petitioner has the burden of proving the factual allegations by clear and convincing evidence. *Id.* § 40-30-110(f); *see* Tenn. Sup. Ct. R. 28, § 8(D)(1); *Nesbit v. State*, 452 S.W.3d 779, 786 (Tenn. 2014). Evidence is considered clear and convincing when there is no serious or substantial doubt about the accuracy of the conclusions drawn from it. *Lane v. State*, 316 S.W.3d 555, 562 (Tenn. 2010); *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009); *Hicks v. State*, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998).

A claim for post-conviction relief based on alleged ineffective assistance of counsel presents mixed questions of law and fact. *Mobley v. State*, 397 S.W.3d 70, 80 (Tenn. 2013) (citing *Calvert v. State*, 342 S.W.3d 477, 485 (Tenn. 2011)). A post-conviction court's findings of fact are conclusive on appeal unless the evidence in the record preponderates against them. *Calvert*, 342 S.W.3d at 485 (citing *Grindstaff*, 297 S.W.3d at 216; *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999)). "Accordingly, we generally defer to a post-conviction court's findings with respect to witness credibility, the weight and value of witness testimony, and the resolution of factual issues presented by the evidence." *Mobley*, 397 S.W.3d at 80 (citing *Momon v. State*, 18 S.W.3d 152, 156 (Tenn. 1999)). However, we review a post-conviction court's application of the law to its factual findings de novo without a presumption of correctness. *Id.* (citing *Grindstaff*, 297 S.W.3d at 216; *Finch v. State*, 226 S.W.3d 307, 315 (Tenn. 2007); *Vaughn v. State*, 202 S.W.3d 106, 115 (Tenn. 2006)).

The right to effective assistance of counsel is protected by both the United States Constitution and the Tennessee Constitution. U.S. Const. amend. VI; Tenn. Const. art. I, § 9. In order to prevail on an ineffective assistance of counsel claim, the petitioner must

establish that (1) his lawyer's performance was deficient and (2) this deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996). A petitioner successfully demonstrates deficient performance when the petitioner establishes that his attorney's conduct fell "below an objective standard of reasonableness under prevailing professional norms." *Goad*, 938 S.W.2d at 369 (citing *Strickland*, 466 U.S. at 688; *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975)). Prejudice arising therefrom is demonstrated once the petitioner establishes "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 370 (quoting *Strickland*, 466 U.S. at 694). "Because a petitioner must establish both prongs of the test, a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim. Indeed, a court need not address the components in any particular order or even address both if the [petitioner] makes an insufficient showing of one component." *Id.*

Petitioner asserts that if trial counsel had properly discussed his case with him and reviewed the discovery materials, Petitioner "could have contributed in his defense and the outcome of his case would have been different." The post-conviction court noted that Petitioner admitted trial counsel reviewed Petitioner's statement to police with him, and the court determined, "As this statement was such a compelling piece of evidence in discovery, it is unlikely that even if the lack of examination with Petitioner of anything else that may have been included in the discovery packet proved to be deficient performance, Petitioner would have been unduly prejudiced."

Regarding Petitioner's claim that trial counsel failed to meet with him and communicate with him about his case, the post-conviction court noted that Petitioner admitted that trial counsel met with him "on more than one occasion" and concluded, "As an experienced attorney, it seems reasonable to believe that [trial counsel] met with Petitioner enough times as he thought necessary to cover all of the information that Petitioner needed for trial." The court further found that trial counsel and Petitioner both testified that they discussed Petitioner's decision not to testify at trial.

The evidence does not preponderate against the post-conviction court's findings. Trial counsel testified that he received discovery and reviewed it with Petitioner. Petitioner acknowledged that trial counsel discussed Petitioner's statement to police with him. Trial counsel testified, and Petitioner acknowledged, that trial counsel met with Petitioner both at the courthouse and in jail. Trial counsel testified that he discussed the State's allegations against Petitioner and that Petitioner indicated he understood. Trial counsel testified that Petitioner did not offer any information that would have been helpful to his defense and that the proof against Petitioner was overwhelming, making it "a really difficult case."

Petitioner's claims that trial counsel failed to meet with him and failed to review discovery are vague. Petitioner neither supported these claims with proof at the evidentiary hearing, nor does Petitioner provide argument beyond his bare assertion in his brief on appeal.

Additionally, Petitioner claims he was "not given an opportunity to be knowledgeable about this case and what was going on." This claim is illogical given the opportunity Petitioner had to participate in a full jury trial of the State's charges before being reversed by this Court on direct appeal, and return for retrial, with the same charges, the same evidence, and with the assistance of the same trial counsel.

Petitioner has failed to prove that counsel's representation was deficient or that he was prejudiced by counsel's representation. As such, he is not entitled to relief.

CONCLUSION

Based on the foregoing, the judgment of the post-conviction court is affirmed.

TIMOTHY L. EASTER, JUDGE