

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs June 27, 2023

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RICKY CAMPBELL, JR. v. STATE OF TENNESSEE

Appeal from the Criminal Court for Hawkins County
No. CC-20-CR-113 Alex Pearson, Judge

No. E2022-01526-CCA-R3-PC

The Petitioner, Ricky Campbell, Jr., pleaded guilty to theft of more than \$10,000. Thereafter, the Petitioner filed a petition for post-conviction relief, claiming that he received the ineffective assistance of counsel, which the post-conviction court denied after a hearing. After review, we affirm the post-conviction court's judgment.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the Court, in which ROBERT L. HOLLOWAY, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

John S. Anderson, Rogersville, Tennessee, for the appellant, Ricky Campbell, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Abigail H. Rinard, Assistant Attorney General; Dan E. Armstrong, District Attorney General; and Amy L. Hinkle, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts and Background

The record in this case does not contain the facts underlying the Petitioner's guilty plea. As such, we discern scant background information from the record. The Petitioner pleaded guilty to theft of property valued at more than \$10,000. It appears from the record that the stolen property was a tractor.

A. Post-Conviction Proceedings

The Petitioner filed a petition for post-conviction relief, *pro se*, which was later amended by appointed counsel, alleging that he had received the ineffective assistance of

counsel.

The following evidence was presented at a hearing on the petition: The Petitioner testified that his trial counsel (“Counsel”) met with him only one time before his guilty plea hearing. Counsel told the Petitioner that the value of the stolen property was \$12,000. The Petitioner later learned that the property was only worth \$3,250. The Petitioner testified that he wanted Counsel to request split confinement so the Petitioner could participate in substance abuse treatment but Counsel declined to do so. Prior to Counsel’s appointment, the Petitioner had been represented by another attorney who secured for the Petitioner a plea deal in exchange for an eight-year sentence. When his first attorney requested to be removed from the case, Counsel was appointed and the plea offer “went from eight to fourteen [years].” The Petitioner testified that Counsel did not review discovery with him. The Petitioner stated that he understood the offense he was charged with and pleading guilty to, along with his right to a trial and to testify.

The Petitioner stated that he was sentenced on a Class B felony conviction to fourteen years but that the lesser value of the stolen property would have dropped his conviction to a Class D felony with a sentencing range of two to four years. He testified that the facility where he was incarcerated was a “war zone.”

It appears from the hearing transcript that Counsel was not present to testify. It is unclear whether a subpoena was issued for Counsel to appear.

The post-conviction court issued an order denying the Petitioner relief and stating the following:

First and foremost . . . , I’ve known [the Petitioner] and his father for a number of years. His father, that’s been a positive experience. [The Petitioner] has not necessarily been a positive experience. It’s always been in some way or another in or around the court system, but be that as it may, a few things I’ll note with that. Number one, [the Petitioner] is not somebody that’s just been charged with a criminal offense for the very first time. [The Petitioner] has been represented by several lawyers over the years, been in court numerous times. [The Petitioner] knows the discovery process. [The Petitioner] knows his right[] to an attorney. [The Petitioner] knows all that because he’s been told all those things not only by me, but by Judge Dugger and probably other judges on multiple occasions, and I mean, we just have to call the facts as they are. And [the Petitioner] knows those things.

As for his assertion that this was a B felony, he’s incorrect. It was never a B felony. It’s a C felony. And the reason that you got the sentence you did is because you pled as a Range II offender. You’re greater than a Range II offender, which is noted by the fact in your plea offer that’s a part

of the court file, that you're originally offered a sentence at 45 percent, but then the State through the negotiation process reduced that down to 35 percent.

....

As far as the value, the amount of restitution alone ordered was three thousand dollars, and so -- and that was with the property being recovered. So it's hard for the court to find that the value of the property was less than ten thousand dollars. It's not the amount of damages done to it, but it's the value of the property at the time that it was stolen. And so it's not uncommon at all that you could be convicted of a theft of a greater amount than the damage that was done because you get the property back and if it was wholly unharmed and there was no damage, there would be no restitution, but that doesn't change the fact that you committed the theft. I mean, in other words, it doesn't take away from any of that.

The court covered the plea allocution. I went over the rights. I went over whether he was satisfied with [Counsel]. I went over did he do everything you wanted him to do, did he do something you didn't want him to do. I cover all those in every one of my plea allocutions.

....

And the court has to make a credibility determination and we went over all these things about the plea. I went over the plea, went over the sentence, went over all that stuff, went over his rights, about his rights, and [the Petitioner] acknowledged on the witness stand that he knew what his rights were.

And that brings us down to the next thing, and [the Petitioner] is probably not aware of this, but a ten year sentence is non-probable. I can't probate that if I wanted to probate that. It's a non-probable sentence. Now, some sentences where [] you take one and you make it consecutive to another and consecutive to another and consecutive to another, that possibly could be probable or alternative sentencing. But if you follow the law, a ten year sentence is and they actually reduced that. The longest you can get probation now on anything is eight years. So if the sentence is greater than eight years, that's going to be non-probable because pursuant to the statute, you can't sentence somebody to any longer than eight years probation on a single incident.

. . . [T]his was a negotiated plea. [The Petitioner] negotiated the

agreement. It was covered in court. The court went through with it and [the Petitioner] pled guilty and I covered that stuff. He had a lawyer. His lawyer signed off on the judgment, verified it was correct. I have a copy of the offer sheet here that establishes -- one time the offer was fourteen years and it was negotiated down to 35 percent, fourteen at 45. It was negotiated down to 35. Here's the enhanced sentence that was filed establishing that he pled guilty . . . establishing that he was a Range III offender, which is 45 percent.

So [Counsel], regardless of what [the Petitioner's original attorney] said, . . . the bottom line is the offer that's filed in court was fourteen at 45 and [Counsel] got it dropped to 35, which is a benefit to [the Petitioner]. Probably he should have been sentenced at 45 percent given his record. And [the Petitioner] needs to understand if I were to set aside the sentences, then he wouldn't be looking at the 35 percent anymore, we'd be going back to the 45 percent and having a trial on the issue.

So for those reasons, the court is of the opinion that this petition for post-conviction needs to be denied. There is just simply -- it's the court's opinion that either -- that [the Petitioner's] assertions are either factually inaccurate such as his statements concerning the law or are a misunderstanding and that the court -- this is not a trial in which that we have to worry about cross-examination or objections or anything else. This was a negotiated agreement. There was no sentencing hearing. This was a negotiated agreement. This wasn't an open plea in which we had a sentencing hearing or anything else. It was just a straight up guilty plea to something lesser than what the [Petitioner's] range of punishment would be pursuant to the filings from the [S]tate. So ultimately, the court cannot do anything to benefit [the Petitioner] in this case. His petition for post-conviction is denied.

. . . .

. . . [W]e don't do buyer's remorse in here where somebody decides that they don't like the outcome that occurred and then they want to try to change their mind. I went over everything as part of the plea. You had competent counsel. I covered your rights, you acknowledged your rights, and you simply don't like the fact that you're in the current situation you are. And you don't agree with the fact -- and I can understand that, that certain defendants are treated differently than other defendants and certainly that's something that the Attorney General's office has the right to make a determination as to who they want to show some leniency to and who they don't within a wide degree of discretion and that's where we are.

It is from this judgment that the Petitioner now appeals.

II. Analysis

On appeal, the Petitioner contends that the post-conviction court erred when it denied his petition because he received the ineffective assistance of counsel. He contends that Counsel did not obtain the discovery file and the actual value of the stolen property was less than \$10,000. He contends that Counsel's ineffective assistance justifies the setting aside of his guilty plea. The State responds that the Petitioner has waived his arguments for failing to provide a full and adequate record of what transpired in the conviction phase proceedings, but that regardless, the evidence does not preponderate against the post-conviction court's findings at the hearing. We agree with the State.

Initially, we reiterate that the transcript of the plea hearing and the underlying facts of the plea are not included in the appellate record, and the post-conviction hearing transcript makes no mention of the facts. The appellant has a duty to prepare a record that conveys "a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal." Tenn. R. App. P. 24(b). "In the absence of an adequate record on appeal, we must presume that the trial court's ruling was supported by the evidence." *State v. Bibbs*, 806 S.W.2d 786, 790 (Tenn. Crim. App. 1991) (citations omitted). *See State v. Jones*, 568 S.W.3d 101, 137 (Tenn. 2019) (noting that the defendant had failed to include a transcript of a hearing but holding that, on the basis of the record provided, the defendant had not established error); *see also State v. Caudle*, 388 S.W.3d 273, 279 (Tenn. 2012).

In this case, the post-conviction judge was also the judge at the guilty plea hearing. The judge was, therefore, aware of the circumstances surrounding the entry of the Petitioner's plea and, as such, was able to articulate the reasoning for denying his petition for post-conviction relief. The Petitioner's testimony at the post-conviction hearing and the court's resulting rationale for its ruling provide this court with an adequate record to reach the issue on the merits.

Turning to the Petitioner's claim that he received the ineffective assistance of counsel, we begin by stating that in order to obtain post-conviction relief, a petitioner must show that his or her conviction or sentence is void or voidable because of the abridgment of a constitutional right. T.C.A. § 40-30-103 (2018). The petitioner bears the burden of proving factual allegations in the petition for post-conviction relief by clear and convincing evidence. T.C.A. § 40-30-110(f) (2018). The post-conviction court's findings of fact are conclusive on appeal unless the evidence preponderates against it. *Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). Upon review, this court will not re-weigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the weight and value to be given their testimony and the factual issues raised by the evidence are to be resolved by the trial judge, not the appellate courts. *Momon v. State*, 18 S.W.3d 152, 156

(Tenn. 1999); *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997). A post-conviction court's conclusions of law, however, are subject to a purely *de novo* review by this court, with no presumption of correctness. *Id.* at 457.

The right of a criminally accused to representation is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution. *State v. White*, 114 S.W.3d 469, 475 (Tenn. 2003); *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). The following two-prong test directs a court's evaluation of a claim for ineffectiveness:

First, the [petitioner] must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the [petitioner] by the Sixth Amendment. Second, the [petitioner] must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. Unless a [petitioner] makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); *State v. Melson*, 772 S.W.2d 417, 419 (Tenn. 1989).

In reviewing a claim of ineffective assistance of counsel, this court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal cases. *Baxter*, 523 S.W.2d at 936. To prevail on a claim of ineffective assistance of counsel, a petitioner must show that "counsel's representation fell below an objective standard of reasonableness." *House v. State*, 44 S.W.3d 508, 515 (Tenn. 2001) (citing *Strickland*, 466 U.S. at 688).

When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. *Strickland*, 466 U.S. at 690; *State v. Mitchell*, 753 S.W.2d 148, 149 (Tenn. Crim. App. 1988). The reviewing court must evaluate the questionable conduct from the attorney's perspective at the time. *Strickland*, 466 U.S. at 690; *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982). In doing so, the reviewing court must be highly deferential and "should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Burns*, 6 S.W.3d at 462. Finally, we note that a defendant in a criminal case is not entitled to perfect representation, only constitutionally adequate representation. *Denton v. State*, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). In other words, "in considering claims of ineffective assistance of counsel, 'we address not what is prudent or appropriate, but only what is constitutionally compelled.'" *Burger v. Kemp*, 483 U.S. 776, 794 (1987) (quoting *United States v. Cronin*,

466 U.S. 648, 665 n.38 (1984)).

If the petitioner shows that counsel's representation fell below a reasonable standard, then the petitioner must satisfy the prejudice prong of the *Strickland* test by demonstrating "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; *Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002). This standard also applies to claims arising out of the plea process. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). To satisfy the requirement of prejudice in a case involving a guilty plea, the petitioner must demonstrate a reasonable probability that, but for counsel's errors, he or she "would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59. This reasonable probability must be "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *Harris v. State*, 875 S.W.2d 662, 665 (Tenn. 1994). A petitioner is not entitled to relief from his conviction on this ground unless he can produce a material witness who (a) could have been found by a reasonable investigation and (b) would have testified favorably in support of his defense if called. Otherwise, the petitioner fails to establish the prejudice requirement mandated by *Strickland*. *Black v. State*, 794 S.W.2d 752, 757-58 (Tenn. Crim. App. 1990).

The post-conviction court found that the Petitioner's testimony was not credible and that his claims about his sentencing eligibility and plea offers were incorrect. The post-conviction court noted that the Petitioner was familiar with the criminal process, including viewing discovery, and stated that the Petitioner was given ample opportunity to raise an issue if the discovery file was, in fact, not obtained by Counsel. The post-conviction court noted that Counsel negotiated a lower release edibility for the Petitioner. It recalled walking the Petitioner through the plea process and giving him adequate opportunity to voice concerns with his plea or his representation. The post-conviction court found that Counsel's representation was competent and that Counsel obtained a favorable sentence for the Petitioner given his exposure as a Range III. The evidence does not preponderate against the post-conviction court's findings. The Petitioner agreed that he was aware of his rights to proceed to trial and entered his guilty plea after an explanation from Counsel and the post-conviction court and a prolonged plea negotiation. The Petitioner did not present any evidence, other than his testimony, that Counsel did not obtain the discovery file. He now claims that the value of the property stolen did not meet the value in the indictment; however, he also has not presented any evidence of this claim. Finally, he has not presented evidence that, but for Counsel's alleged ineffective representation, he would not have entered the plea and proceeded to trial. The Petitioner is not entitled to relief.

III. Conclusion

After a thorough review of the record and the applicable law, we conclude the post-conviction court properly denied the Petitioner's petition for post-conviction relief. In accordance with the foregoing reasoning and authorities, we affirm the judgment of the

post-conviction court.

ROBERT W. WEDEMEYER, JUDGE