

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs October 4, 2022

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JAHUE MUMPHREY v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
Nos. I1700053 / C1704933 Lee V. Coffee, Judge

No. W2021-01439-CCA-R3-PC

The Petitioner, Jahue Mumphrey, pled guilty by criminal information to possessing a controlled substance with the intent to sell and three counts of domestic assault. He was sentenced to an effective term of ten years. He later filed a petition for post-conviction relief alleging that his plea was entered involuntarily and that his lawyer rendered ineffective assistance of counsel by, among other things, failing to review pretrial discovery with him. After a hearing, the post-conviction court denied the petition, and the Petitioner appealed to this Court. We respectfully affirm the judgment of the post-conviction court.

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

TOM GREENHOLTZ, J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and J. ROSS DYER, JJ., joined.

Josie S. Holland, Memphis, Tennessee, for the appellant, Jahue Mumphrey.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Meghan Fowler, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

A. GUILTY PLEAS

On December 8, 2017, the Petitioner, Jahue Mumphrey, pled guilty to one count of possessing a controlled substance with the intent to sell cocaine and three separate domestic assault offenses. On the State's recommendation, the trial court sentenced the Petitioner to serve an effective sentence of ten years with a release eligibility of thirty percent.

The Petitioner did not include the written plea agreement in the record of this appeal. However, from the transcript of the hearing on the Petitioner's plea, the record shows that the trial court explained to the Petitioner that, as a consequence of entering a guilty plea by criminal information, he was waiving his right to be indicted by a grand jury. The trial court also reviewed with the Petitioner the constitutional rights that he would be waiving by entering into the plea, as well as the direct consequences of the plea, such as enhancement of future sentences and the loss of the rights to vote, to sit on a jury, and to possess a firearm. The trial court further discussed the nature of the charged offenses and their punishment, and it reviewed the specific terms of the plea agreement. When the trial court asked the Petitioner whether the terms of the agreement it had announced were "the agreement you have with the State of Tennessee," the Petitioner replied, "Yes, sir."

The trial court also asked the Petitioner whether he understood all the consequences of his guilty plea, and the Petitioner unequivocally responded, "Yes, sir." When asked whether he had any questions for the court concerning his rights or the guilty plea, the Petitioner replied, "No, sir." Finally, when the trial court asked the Petitioner whether any person had threatened him, made other promises to him, or pressured him to plead guilty, the Petitioner answered, "No, sir."

Following the colloquy, the trial court announced its findings:

I'm going to find for the record that [trial counsel] has represented you satisfactorily. I find that [trial counsel] and this [c]ourt have explained all your rights to you. I find that you understand your rights, and that you've waived, you've given up, those rights intelligently and knowingly. I do find, Mr. Mumphrey, that there is a factual basis, there is a reason, for your guilty plea, which has been entered freely and voluntarily.

B. POST-CONVICTION PROCEEDINGS

On November 29, 2018, the Petitioner filed a petition for post-conviction relief, asserting that he was denied his Sixth Amendment right to the effective assistance of counsel. More specifically, the Petitioner alleged that his trial counsel advised him to plead guilty while (1) failing to investigate the case adequately; (2) failing to file a motion to suppress evidence; (3) failing to move to sever the domestic violence offenses from the drug offenses; (4) failing to explain the law of constructive possession. The Petitioner also alleged that the cumulative effect of the deficiencies deprived him of the effective assistance of counsel.

The post-conviction court appointed counsel to represent the Petitioner, and counsel filed an amended post-conviction petition. The amended petition incorporated the claims asserted in the original petition. It also alleged that the Petitioner's guilty plea was not knowingly and voluntarily entered because neither the trial court nor his counsel adequately advised him of the rights he would be waiving upon entry of the plea.

On August 30, 2021, the post-conviction court held a hearing on the petition. Both the Petitioner and trial counsel testified at this hearing.

1. Petitioner's Testimony

At the beginning of the hearing, the Petitioner's counsel noted that the Petitioner wished to amend his claims to add an allegation that trial counsel failed to present discovery to him before advising him to plead guilty. To that end, the Petitioner testified that his plea was an "ignorant" plea because trial counsel did not adequately investigate the case or review discovery with him. The Petitioner testified that trial counsel "didn't present me with no discovery to overlook my case." He also stated that no "proper attorney" would have let him accept a plea agreement without giving him "proper information" and an "opportunity to overlook this case."

Concerning his claim that trial counsel failed to investigate the case, the Petitioner testified that he did not know whether trial counsel investigated the case, but that he did not see that any "effort was made" by trial counsel to do so. When asked how viewing discovery would have changed his thinking on the case, the Petitioner responded, "I would imagine, ah, to properly prepare myself to arrange to see what the State had against me, and what would have been my reasonable choice, to see if they had enough that the Grand Jury wanted to indict me on this case." In response to a question about why he took the plea without receiving discovery, the Petitioner stated, "That's why I was looking for the

advice of my attorney. My—my advice—my attorney advised me that he felt that I should take the plea deal.”

The Petitioner testified that he did not recall whether he discussed with the trial court that he would be waiving his right to discovery. But, he stated that his attorney did not threaten him, and he did not feel coerced to enter a plea.

With respect to his background, the Petitioner testified that he had pled guilty “several times” previously and that he had two or three prior felony convictions. He also testified that he previously pled guilty to charges of selling cocaine brought by criminal information. The Petitioner agreed that, given his criminal history, his ten-year effective sentence represented about one-quarter of the maximum sentence that he could have possibly received.

The Petitioner offered no testimony concerning his claim that trial counsel failed to advise him on the elements of the crimes charged against him or on the other grounds raised in his post-conviction petition.

2. Trial Counsel’s Testimony

Trial counsel testified that he has been in the practice of law since 1999 and that he practices exclusively in the area of criminal law. Additionally, he testified that he was the second attorney to represent the Petitioner. The first attorney secured a plea offer for an effective nine-year sentence, but the Petitioner rejected that offer.

After the Petitioner retained him, trial counsel secured a plea offer from the State involving an effective ten-year sentence, and he advised the Petitioner to accept the plea. Counsel noted that although the Petitioner was arrested on a charge of aggravated assault at his home, officers had been “watching him on narcotics trafficking” and had “already made controlled buys.” Summarizing the events surrounding the arrest, trial counsel observed that

And on this particular case, when they came in with the arrest warrant, they arrested him for the aggravated assaults. They saw paraphernalia in plain view -- they secured. And they also saw marijuana in plain view, the odor of marijuana. They secured the residence. They found scales. They found over 200 grams of powder cocaine. And I think it was in a wall, in a bag, in a Crown Royal bag. Found about 55 grams of crack cocaine, you know, all -- a quarter kilo.

Testifying as to the nature of the plea agreement, trial counsel opined that “when you’re a Range II, and you’re picking up a case with a quarter kilo, with a couple of aggravated assaults thrown in on top of that, you know, you’re — a 10-year deal, is a really good deal at 30 percent.”

When trial counsel testified concerning the discovery issue, he noted that the State was not required to provide discovery when the defendant agreed to plead guilty by criminal information. He also observed that, generally, discovery materials would not be voluminous in this type of case:

I mean, a drug case, usually is not going to be so complicated that the discovery is going to be in a whole lot of discovery. It’s generally, you can look at the affidavit, and you can look at the arrest ticket, and you can see what this case is—you know how this case is going to go.

Trial counsel stated that he did not believe that video of the events existed. Although he did not have a specific recollection of researching the search warrants, trial counsel testified that he examines those issues in every case.

Trial counsel testified that he understood that the Petitioner was a Range II offender and that the Petitioner’s sentencing exposure on the most serious charge was between twelve and twenty years, likely running consecutively to a previous aggravated assault case for which the Petitioner was on bond. When asked whether he thought the Petitioner could have received a better outcome had he rejected the agreement and insisted on a trial, trial counsel responded,

I think we would not—you know. The aggravated assaults, they were domestic, you know. Maybe the victim doesn’t show up, maybe she’s arrested, those are so many what if’s. Well, we got those reduced to misdemeanors. So, they were practically eaten up by the 10-year[s] on the drugs.

But on the drug case, no. I think we would have been receiving 20 years, if not, you know, something higher than that, based on convictions on the other cases. Because once you go to trial on one, you go to trial on all. He would have had to have gone on trial on the aggravated assaults, also. You can’t pick and choose, the State doesn’t allow that. So, we would have gone to trial on everything. He was facing 40 years, and 11 [months and] 29 [days].

And, you know, even if Judge Coffee would have taken as much mercy as possible on him, he would have still been looking at . . . 22 years, and 11 months, and 29 days, if the judge would have given him the minimum, considering they were committed while out on bond.

3. Post-Conviction Court's Denial of Relief and Petitioner's Appeal

At the conclusion of the post-conviction hearing, the post-conviction court made oral findings of fact and conclusions of law denying post-conviction relief. On November 9, 2021, the post-conviction court entered a formal order denying the post-conviction petition. In that written order, the post-conviction court found that “the petitioner’s guilty plea was knowingly, voluntarily, and intelligently entered.” Additionally, it found that the trial court “scrupulously followed the mandates of Rule 11 of the Tennessee Rules of Criminal Procedure and applicable state and federal law.” The post-conviction court also found that the Petitioner “clearly failed to establish prejudice. This result would not have been different. In fact, the [Petitioner] would have certainly been convicted at trial and faced a much greater sentence if convicted by a jury.”

Although the post-conviction court’s written order did not specifically address the Petitioner’s claim that trial counsel was ineffective in failing to review pretrial discovery with him, the court’s oral announcement following the hearing did address this issue. In that oral announcement, the post-conviction court found that “Tennessee law does not allow, does not permit, does not require, the State of Tennessee to disclose or to grant complete discovery prior to an indictment in this case.” It also found that the Petitioner failed to establish prejudice concerning this issue, noting that “[t]here’s nothing before the Court that would indicate that complete discovery would have changed this result. There’s nothing before the Court that would indicate that complete discovery would have somehow made a difference in the outcome of this case.”

The Petitioner filed a timely notice of appeal on December 6, 2021. In this appeal, the Petitioner argues that he did not “understand his guilty plea, its terms, or the mechanisms which brought him to the point at which he pled to ten (10) years at thirty percent (30%) on a B felony for possession of cocaine with intent to sell.” Beyond this statement, the Petitioner’s brief does not identify a particular misunderstanding or a specific instance of ineffective assistance of counsel that affected his plea. Concerning any prejudice from trial counsel’s allegedly deficient performance, the Petitioner merely asserts that “[o]n the question of prejudice, Appellant submits on the proof adduced at the hearing to this Honorable Court.”

In response, the State argues that the Petitioner has waived any claim that he received the ineffective assistance of counsel by failing to brief and argue how trial counsel was deficient and how he was prejudiced. It also argues that “[i]t is readily apparent that the petitioner made the voluntary and intelligent choice to plead guilty.” We agree with the State.

ANALYSIS

The Tennessee Post-Conviction Procedure Act provides an avenue for relief “when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” Tenn. Code Ann. § 40-30-103. A post-conviction petitioner has the burden of proving his or her allegations of fact by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f). For evidence to be clear and convincing, “it must eliminate any ‘serious or substantial doubt about the correctness of the conclusions drawn from the evidence.’” *Arroyo v. State*, 434 S.W.3d 555, 559 (Tenn. 2014) (quoting *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012)).

In this case, the Petitioner generally alleges that he did not understand his guilty plea or its terms. Our supreme court has recognized that “[t]he validity of a guilty plea is a mixed question of law and fact.” *Lane v. State*, 316 S.W.3d 555, 562 (Tenn. 2010). As such, our review of whether the Petitioner entered a valid guilty plea in this case is also de novo, applying a presumption of correctness only to the post-conviction court’s findings of fact. *Holland v. State*, 610 S.W.3d 450, 455 (Tenn. 2020).

When a defendant enters a guilty plea, he or she “waives several constitutional rights, including the privilege against self-incrimination, the right to a trial by jury, and the right to confront his accusers.” *State v. Mellon*, 118 S.W.3d 340, 345 (Tenn. 2003). As such, the Due Process Clause of the Fourteenth Amendment requires that “a guilty plea must be entered knowingly, voluntarily, and intelligently.” *Ward v. State*, 315 S.W.3d 461, 465 (Tenn. 2010); see *Frazier v. State*, 495 S.W.3d 246, 253 (Tenn. 2016). Where a defendant’s guilty plea “‘is not equally voluntary and knowing, it has been obtained in violation of due process’ and must be set aside.” *State v. Nagele*, 353 S.W.3d 112, 118 (Tenn. 2011) (quoting *Blankenship v. State*, 858 S.W.2d 897, 905 (Tenn. 1993)). Thus, a post-conviction petitioner’s claim “which asserts that a plea was not voluntarily and knowingly entered, implicates his due process rights and therefore falls squarely within the ambit of issues appropriately addressed in a post-conviction petition.” *State v. Wilson*, 31 S.W.3d 189, 194 (Tenn. 2000).

To determine whether a guilty plea was knowingly, voluntarily, and intelligently entered, a court must look to “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Jaco v. State*, 120 S.W.3d 828, 831 (Tenn. 2003) (quoting *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). A defendant cannot make this voluntary and intelligent choice if the decision “results from, among other things, ignorance or misunderstanding.” *Nagele*, 353 S.W.3d at 118. Thus, before a trial court may accept a guilty plea, it must canvass “the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence.” *Garcia v. State*, 425 S.W.3d 248, 262 (Tenn. 2013) (quoting *Brady v. United States*, 397 U.S. 742, 755 (1970)).

Ultimately, the issue of “whether an accused’s plea of guilty was voluntarily, understandingly, and knowingly entered is to be determined based upon the totality of the circumstances.” *State v. Turner*, 919 S.W.2d 346, 353 (Tenn. Crim. App. 1995); see *Rigger v. State*, 341 S.W.3d 299, 308-09 (Tenn. Crim. App. 2010). Our supreme court has recognized several factors that may inform this analysis, including the following:

- 1) the defendant’s relative intelligence; 2) the defendant’s familiarity with criminal proceedings; 3) the competency of counsel and the defendant’s opportunity to confer with counsel about alternatives; 4) the advice of counsel and the [trial] court about the charges and the penalty to be imposed; and 5) the defendant’s reasons for pleading guilty, including the desire to avoid a greater penalty in a jury trial.

Howell v. State, 185 S.W.3d 319, 330-31 (Tenn. 2006).

A. INEFFECTIVE ASSISTANCE OF COUNSEL

In his brief, the Petitioner asserts in an argument heading that he received the ineffective assistance of counsel. “[D]uring the plea bargain process, as at all critical stages of the criminal process, counsel has the responsibility to render effective assistance as required by the Sixth Amendment.” *Nesbit v. State*, 452 S.W.3d 779, 787 (Tenn. 2014). Thus, plea counsel’s “effectiveness may implicate the requirement that a plea must be entered knowingly and voluntarily, *i.e.*, that the petitioner made the choice to plead guilty after being made aware of the significant consequences of such a plea.” *Johnson v. State*, No. W2015-02498-CCA-R3-PC, 2017 WL 192710, at *4 (Tenn. Crim. App. Jan. 17, 2017); see *State v. Pettus*, 986 S.W.2d 540, 542 (Tenn. 1999).

Beyond the argument heading in his brief, however, the Petitioner does not identify any error alleged to have been committed by the post-conviction court in its analysis of the

Petitioner’s claims that his trial counsel was constitutionally deficient in his representation. The Petitioner also does not identify any prejudice with citations to the record and any legal authorities, asserting instead that “[o]n the question of prejudice, Appellant submits on the proof adduced at the hearing to this Honorable Court.”

Tennessee Rule of Appellate Procedure 27(a)(7) requires that the appellant set forth an argument for each issue, along with “the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on[.]” Similarly, Rule 10(b) of the Rules of this Court states plainly that “[i]ssues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.”

Because of the inadequacy of the Petitioner’s brief, we must conclude that the Petitioner has waived appellate consideration of this issue. *E.g., State v. Molthan*, No. M2021-01108-CCA-R3-CD, 2022 WL 17245128, at *2 (Tenn. Crim. App. Nov. 28, 2022). We, therefore, affirm the post-conviction court’s judgment denying post-conviction relief on this ground.

B. KNOWING AND VOLUNTARY GUILTY PLEA

As to the validity of his plea otherwise, the Petitioner asserts generally that he did not understand the terms or “mechanics” of his plea. However, although he identifies the requirements for a valid plea established by *Boykin v. Alabama*, 395 U.S. 238, 243 (1969), *State v. Mackey*, 553 S.W.2d 337 (Tenn. 1977), and Tennessee Rule of Criminal Procedure 11, he does not identify how these requirements were not followed in his case. From our own examination of the record, the post-conviction court properly found that the Petitioner entered a constitutionally valid plea.

For example, during the original plea hearing, the State reviewed with the trial court and the Petitioner the factual basis for each proposed conviction offense. The trial court then reviewed with the Petitioner his background and educational attainment. It discussed the written plea agreement and confirmed that the Petitioner discussed the agreement with trial counsel and personally signed the agreement. The trial court reviewed with the Defendant that he would be admitting the truth of the facts recited by the State comprising the offenses and that the Petitioner had the right to plead “not guilty” to the charges.

In addition, the trial court identified the constitutional rights that the Petitioner would be waiving by entering into the plea, including the rights to plead not guilty, to be represented by counsel, to have the case tried by a jury, to subpoena evidence and cross-

examine witnesses, to testify and to remain silent, and to appeal any conviction and sentence. The Petitioner confirmed that he wished to waive these rights. The court then reviewed the nature of the charges that were the subject of the plea, including the proposed resolution and sentence offered by the parties. It also identified the direct consequences of the plea, including the impact of the plea on various civil rights, the permanent nature of the convictions, and the possibility that future sentences would be enhanced.

Importantly, the trial court also reviewed with the Petitioner his right to have the case submitted to the grand jury for its review. The court carefully explained that the cases would be dismissed if the grand jury did not find the charges to be supported by probable cause. Finally, the trial court made a specific inquiry as to whether the Petitioner agreed to plead guilty due to any threats, coercion, or pressure. The Petitioner denied any such pressures.

During the hearing, the Petitioner affirmed his understanding that his responses were made under oath. When the trial court asked the Petitioner whether the terms of the agreement that the court announced reflected “the agreement you have with the State of Tennessee,” the Petitioner replied, “Yes, sir.” The Petitioner confirmed that he understood all the consequences of his guilty plea. He also denied that he had any questions about the rights he was waiving, the plea that he was entering, or the agreement that he had with the State. Even after the trial court imposed the sentence, the trial court again asked the Petitioner whether he had any questions before the judgment was entered. The Petitioner answered, “No, sir.”

This court has recognized that “[a] defendant’s solemn declaration in open court that his plea is knowing and voluntary creates ‘a formidable barrier in any subsequent collateral proceeding’ because these declarations ‘carry a strong presumption of verity.’” *Transou v. State*, No. W2022-00172-CCA-R3-PC, 2022 WL 8047703, at *6 (Tenn. Crim. App. Oct. 14, 2022) (quoting *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)), *no perm. app.* Based upon the foregoing, the post-conviction court found that the Petitioner’s guilty pleas were knowingly and voluntarily entered. The record does not preponderate against this determination.

CONCLUSION

In summary, we hold that the Petitioner has waived any argument that his trial counsel rendered ineffective assistance of counsel because he has not identified any error alleged to have been committed by the post-conviction court in its analysis of his claims. We also hold that the record supports the post-conviction court’s findings that the Petitioner

entered a knowing, voluntary, and intelligent plea of guilty. Accordingly, we respectfully affirm the judgment of the post-conviction court.

TOM GREENHOLTZ, JUDGE