

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 1, 2023

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Clerk of the
Appellate Courts

CLINT EARL SIMS v. STATE OF TENNESSEE

Appeal from the Circuit Court for Madison County
No. C-21-309 Kyle C. Atkins, Judge

No. W2022-01597-CCA-R3-PC

Petitioner, Clint Earl Sims, appeals from the Madison County Circuit Court’s order denying him post-conviction relief. On appeal, Petitioner argues he received ineffective assistance of counsel when he pleaded guilty to two counts of aggravated assault, three counts of domestic assault, three counts of vandalism less than \$1,000, one count of false imprisonment, and one count of violating an order of protection. Petitioner also argues counsel’s ineffective assistance rendered his guilty plea unknowing and involuntary. Following our review of the record, the parties’ briefs, and the applicable law, we conclude Petitioner’s appeal is untimely, the interest of justice does not favor waiver of the untimely notice, and therefore, this appeal is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

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

Samuel W. Hinson, Lexington, Tennessee, for the appellant, Clint Earl Sims.

Jonathan Skrmetti, Attorney General and Reporter; Richard D. Douglas, Senior Assistant Attorney General; Jody S. Pickens, District Attorney General; Al C. Earls and Benjamin C. Mayo, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Facts and Procedural History

A. Guilty Plea Proceedings

Petitioner, Clint Earl Sims,¹ was charged in five separate indictments in Madison County Circuit Court. In Case Number 19-958, he was charged with domestic assault, false imprisonment, and vandalism less than \$1,000, all Class A misdemeanors. In Case Number 19-959, he was charged with two accounts of aggravated assault, a Class C felony, and two counts of domestic assault. In Case Number 19-960, he was charged with vandalism less than \$1,000, and violating an order of protection, also a Class A misdemeanor. In Case Numbers 20-136 and 20-137, he was charged with two additional counts of vandalism less than \$1,000.²

On April 7, 2021, Petitioner appeared with trial counsel (Counsel) and pleaded guilty to all charges pursuant to a plea agreement.³ Under the agreement, as a Range II offender, he received the lowest-end effective sentence of six years' imprisonment in the Tennessee Department of Correction (TDOC) on the two aggravated assault offenses, consecutive to a sentence of eleven months and twenty-nine days on the misdemeanor offenses. Petitioner assured the trial court he had signed the agreement and stipulated to the factual basis for his guilty plea. The following exchange occurred between the trial court and Petitioner:

The Court: All right. [Petitioner], in each of these five cases you've told me you went over the indictment with your attorney; is that correct?

Petitioner: Yes, sir.

The Court: Are the facts contained in that indictment at least substantially correct?

¹ Petitioner's surname is also listed as "Simms" on some of the appellate documents; however, we will use "Sims" as it was listed in the trial court and in the post-conviction court's order.

² The record does not contain Petitioner's indictments, but the above-referenced case numbers and charges were listed in the transcript of Petitioner's guilty plea hearing.

³ The plea agreement is not a part of the record in this case, but was recited at Petitioner's guilty plea hearing.

Petitioner: Yes, sir.

At the plea hearing, Petitioner affirmed to the trial court that he had reviewed his guilty pleas with Counsel, and agreed he “had plenty of time” to discuss his case with Counsel. Petitioner also stated that he was satisfied with his legal representation, denied being forced, pressured, or intimidated to enter the guilty pleas, and assured the court he was pleading guilty freely and voluntarily. He waived his right to a jury trial and the right to appeal his conviction.

When the trial court explained the service of Petitioner’s sentence, however, Petitioner balked, in the following exchange with the court:

Petitioner: That’s what we have a problem with right there.

The Court: What’s that?

Petitioner: That [eleven, twenty-nine], that outstanding [eleven, twenty-nine], for - - on the order of protection of violation.

After equivocating on whether he was guilty of violating an order of protection, Petitioner expressed his concern with how TDOC would calculate the service of his sentence:

Petitioner: The way it’s wrote up, like they got it wrote up now - - that what I was telling [Counsel] - - that it’s looking like I’m having to sign [eleven, twenty-nine] and do that first, before I start my TDOC sentence.

The Court: You’ve already done the [eleven, twenty-nine].

Petitioner: Right. But so why is it still - - Now, why is it not ran concurrent with all the rest of the - - the - - misdemeanor charges? Because it’s a misdemeanor also.

The Court: It is run concurrent with them.

Petitioner expressed concern that TDOC would be “ripping [him] off, robbing [him] of [his] good time credits” under the terms of the plea agreement. After Petitioner’s lengthy

back and forth with the trial court and the prosecutor, the State agreed to amend the plea agreement, as explained by the trial court:

The Court: All right. So it looks like we changed where 19-958 and 959 - - which are the two - - which have the aggravated assault - - are now consecutive with the violation of order of protection in 19-960, and the two vandalisms, 20-136 and 137. Is that what you understood?

Petitioner: Yes, sir.

The Court: And that's what you were trying to get us to do, right?

Petitioner: Yes, sir.

The Court: So is that - - All right. So now we're square on that?

Petitioner: Yes, sir.

The trial court found that Petitioner freely, voluntarily, and intelligently pleaded guilty. The court sentenced Petitioner to eleven months and twenty-nine days on the misdemeanor counts, to be followed by six years in TDOC on the aggravated assault counts.

B. Post-Conviction Petition and Hearing

On December 9, 2021, Petitioner filed a timely pro se petition for relief from his convictions and sentence. In his petition, he alleged (1) ineffective assistance of counsel, (2) newly discovered evidence, (3) a violation of the privilege against self-incrimination, (4) that his conviction was based on a coerced confession, and (5) that his guilty plea was unlawfully induced or entered without understanding the consequences of the plea. On January 12, 2022, the post-conviction court filed a preliminary order appointing Petitioner counsel and finding Petitioner presented a colorable claim.

On August 23, 2022, the post-conviction court held a hearing to review the following issues: (1) whether Petitioner had a right to withdraw his guilty plea, and (2) whether Petitioner received ineffective assistance of counsel because of false statements made by Counsel and the trial court. Three witnesses testified: Marlo Sims, Petitioner, and Counsel.

Marlo Sims, Petitioner's wife, testified she was the victim of the events that led to Petitioner's underlying convictions. Mrs. Sims said she never wanted to press charges, and expressed this to the State. She also claimed to have never met Counsel. Mrs. Sims said Petitioner suffered from various mental health illnesses, including "[b]ipolar schizophrenia and stuff like that" but "[a]s long as he's on his medicine he's good." Mrs. Sims was Petitioner's conservator at the time he pleaded guilty, and a Davidson County Circuit Court order reflecting the same was exhibited to the hearing. Mrs. Sims testified Petitioner "got medicine injected into his body without [her] consent" as Petitioner's conservator, and that caused him to commit his crimes.

Petitioner testified that his wife was his conservator. Despite Mrs. Sims' testimony that she never met Counsel, Petitioner claimed his wife gave Counsel a "no-prosecution statement" to give to the trial court, but Counsel never provided it to the court. Petitioner said he had requested a "fast and speedy trial," but had undergone mental evaluations that delayed his trial date. Petitioner said he ultimately decided to plead guilty after a Madison County deputy told Petitioner he had "[nineteen] months on this sentence and that it would take [twenty-one] months to flatten" the six-year sentence. Petitioner claimed his plea was unknowing and involuntary, and he only pleaded guilty because the trial court told him he had only a few months remaining to serve. When discussing the plea offer with the trial court, Petitioner claims that the trial court said, "[d]o you understand that you will be going home soon?" Petitioner stated that he did not believe that statement because he had been to TDOC "a few times," but pleaded guilty anyway. When Petitioner was allowed to read the transcript of his guilty plea, he claimed, "This is not the transcript [T]hey going to have to get my real, um hearing, my real transcript hearing." He later said he was "protesting the transcript." He also stated that he would not have pleaded guilty if he had known he would serve almost his full sentence. Petitioner testified his full expiration date is in 2025.

Counsel testified that Petitioner would go back and forth about whether he wanted to plead guilty. He stated that he and Petitioner went over the plea agreement multiple times, and that he went to great lengths to ensure Petitioner's plea was structured according to Petitioner's specifications. Counsel also testified that he would never guarantee someone that they would be paroled. When asked whether he believed Petitioner was knowledgeable about how sentencing works, Counsel stated, "[Petitioner] was very engaged in the negotiation process" considering his extensive criminal history.

At the conclusion of the hearing, the post-conviction court took the matter under advisement. The post-conviction court later entered a written order denying relief on September 30, 2022. In its order, the post-conviction court found Petitioner failed to meet his burden that he was denied effective assistance of counsel. Specifically, the court stated,

“[Petitioner] did not put on any proof to show that [Counsel’s] services or advice were not within the range of competency demanded of attorneys in criminal cases.” The court further noted Petitioner “can’t rest on mere allegations.” The post-conviction court credited Counsel’s testimony during the post-conviction hearing that he and Petitioner went over the plea agreement multiple times, and that Counsel explained to Petitioner that his “release eligibility date was not a set time for the parole board,” and that Counsel “would never guarantee someone when [he or she] would be paroled.” After considering Counsel’s performance in conforming Petitioner’s guilty plea to Petitioner’s specifications, the post-conviction court found Counsel was not ineffective.

The post-conviction court acknowledged Petitioner’s argument that his plea was involuntary, but the court credited the record over Petitioner’s claim. Specifically, the court credited Petitioner’s own statements during the guilty plea hearing where he testified: (1) he understood the plea agreement; (2) he had reviewed the guilty plea with his attorney; (3) he and his attorney had gone over the strengths and weaknesses of his case; (4) he understood the pros and cons of entering a guilty plea as opposed to going to trial; (5) his plea was voluntary; and (6) trial counsel had answered all of his questions about the case. The post-conviction court’s order also referenced a portion of the guilty plea hearing where Petitioner asked a question about the structure of his sentence, and then the trial court took a break to allow the prosecutor to amend the plea agreement “so that [Petitioner’s] time would work out to his benefit.” After the break, Petitioner testified that he fully understood the plea and wanted the court to accept it. The post-conviction court found that Petitioner “exhibited a very thorough understanding of how the [TDOC] calculated pre-trial credit, good time credits and calculated sentences.”

Petitioner’s notice of appeal document was filed on November 3, 2022. Petitioner was represented by current counsel at the post-conviction hearing and on appeal, and current counsel filed the notice of appeal. In the document’s certificate of service, post-conviction counsel notated that the document was executed on November 3, 2022, and the file stamp of the Clerk of the Appellate Courts shows it was received by the Clerk’s Office that same day. The case is now before us for our review.

II. Analysis

On appeal, Petitioner alleges that Counsel was ineffective for failing to advise Petitioner of the consequences of his guilty plea. Specifically, he argues that Counsel incorrectly told him that his sentence would expire with TDOC “in a matter of months,” and Petitioner’s mental issues “may have required extra care in explaining the consequences of the plea.” Petitioner also argues that his guilty plea was involuntarily entered. The State argues that the post-conviction court properly denied Petitioner’s relief

on his claim of ineffective assistance of counsel, and that Petitioner's guilty plea was knowingly and voluntarily entered.

The State notes in its brief that Petitioner filed an untimely notice of appeal and correctly points out it is in this court's discretion to dismiss Petitioner's appeal for that reason, unless his untimely notice of appeal should be excused in the interests of justice.

A petitioner may appeal as of right from a final judgment in a post-conviction proceeding through filing a notice of appeal and shall designate the judgment from which relief is sought. *See* Tenn. R. App. P. 3(b)(f). "[T]he notice of appeal . . . shall be filed by the clerk of the appellate court within [thirty] days after the date of entry of the judgment appealed from." Tenn. R. App. P. 4(a). "Filing shall not be timely unless the papers are received by the clerk within the time fixed for filing or mailed to the office of the clerk by certified return receipt mail or registered return receipt mail within the time fixed for filing." Tenn. R. App. P. 20(a).

The notice of appeal document in criminal cases "is not jurisdictional," and we may waive the filing of the document "in the interests of justice." Tenn. R. App. P. 4(a). Waiver of the filing, however, "is not automatic." *State v. Rockwell*, 280 S.W.3d 212, 214 (Tenn. Crim. App. 2007). If we "were to summarily grant a waiver whenever confronted with untimely notices, the thirty-day requirement of [Rule 4(a)] would be rendered a legal fiction." *Id.* (citing *Hill v. State*, No. 01C01-9506-CC-00175, 1996 WL 63950, at *1 (Tenn. Crim. App. Feb. 13, 1996)). To determine whether the interests of justice demand such a waiver, we "will consider the nature of the issues presented for review, the reasons for and the length of delay in seeking relief, and any other relevant factors." *Id.* (quoting *State v. Broyle*, No. M2005-00299-CCA-R3-CO, 2005 WL 3543415, at *1 (Tenn. Crim. App. Dec. 27, 2005)).

Here, the post-conviction court's order denying Petitioner relief was filed on September 30, 2022, which was the final judgment appealed from, and began the thirty-day filing requirement. Because October 30, 2022, which was thirty days later, fell on a Sunday, the notice of appeal document was due on Monday, October 31, 2022. *See* Tenn. R. App. P. 21(a). It was not filed until November 3, 2022. This violated Tennessee Rule of Appellate Procedure 4(a).

We considered a similar case in *Echols v. State*, No. W2019-01982-CCA-R3-PC, 2021 WL 1174770 (Tenn. Crim. App. March 29, 2021). In *Echols*, the petitioner missed the certified mailing deadline of his notice of appeal document by three days. *Id.* at *4. The petitioner did not acknowledge his late filing, and did "not [offer] any reason why the

interest of justice necessitates waiver of timely filing in this case.” *Id.* Accordingly, we dismissed the appeal. *Id.* at *1.

Here, Petitioner makes no response to the State’s assertion regarding the untimely notice of appeal. He offers no reason why the interests of justice should lead to waiver of the timely filing requirement in his initial brief, and did not file a reply brief. Petitioner’s failure to offer grounds for us to waive timely filing in the interest of justice does little in persuading us in granting relief. *See id.* at *4. As such, we conclude the interest of justice does not require waiver in this case. Although Petitioner only missed the filing deadline by three days, he has given no reason for his failure to abide with the filing deadline under Tennessee Rule of Appellate Procedure 4(a). Accordingly, Petitioner’s appeal is dismissed.

III. Conclusion

Based on the foregoing reasoning and authorities, the appeal is dismissed due to Petitioner’s failure to timely file a notice of appeal.

MATTHEW J. WILSON, JUDGE