

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs March 3, 2020

FILED
04/03/2020
Clerk of the
Appellate Courts

JEREMY COOPER v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Lake County
No. 18-CR-10491 R. Lee Moore, Jr., Judge**

No. W2019-01080-CCA-R3-PC

Petitioner, Jeremy Cooper, pled guilty to possession with intent to sell or deliver methamphetamine in an amount over .5 grams. Petitioner was sentenced to twelve-years' incarceration to be served concurrently with a ten-year, Madison County, sentence he was already serving. Petitioner filed a petition for post-conviction relief arguing he received ineffective assistance of counsel. The post-conviction court denied relief. After a reviewing the record, we affirm the judgement of the post-conviction court.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD, WITT, JR., and J. ROSS DYER, JJ., joined.

Noel H. Riley, Dyersburg, Tennessee, for the appellant, Jeremy Dewayne Cooper.

Herbert H. Slatery III, Attorney General and Reporter; Caitlin Smith, Senior Assistant Attorney General; Danny Goodman, Jr., District Attorney General; and Lance Webb, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

On August 4, 2017, The Tennessee Department of Correction (“TDOC”) authorities searched Petitioner’s cell and found 5.3 grams of methamphetamine and a cell phone sewn into his pillow. At the time, Petitioner was serving a ten-year sentence for a Madison County conviction for which he was eligible for parole. On July 8, 2018, a Lake County grand jury indicted Petitioner for possession with intent to sell or deliver over .5 grams of methamphetamine, possession of contraband in a penal institution, and of introduction of contraband into a penal institution.

On August 27, 2018, Petitioner pled guilty to the possession with intent to sell or deliver charge, and the State dismissed the other charges. Per the plea agreement, Petitioner was sentenced to twelve-years as a Range I offender to be served concurrently with any prior sentences and received jail credit from the date of the offense. During the plea colloquy, Petitioner confirmed he understood that he had a right to trial. He further confirmed that trial counsel had answered his questions, that he was completely satisfied with his representation. Petitioner confirmed that his plea was entirely voluntary and that he knew “full well” what he was doing.

Post-Conviction Hearing

Petitioner testified that he was currently serving a ten-year sentence on Madison County convictions that dated from June 22, 2014 and that he was concurrently serving his twelve-year sentence in this case. Petitioner testified that trial counsel led him to believe that his twelve-year sentence in this case would run concurrently with his previous sentence “with all credit that applied from [the ten-year] sentence to [the twelve-year] sentence.” He believed that concurrent meant that the sentences would merge. Petitioner believed he would still be eligible for parole for his Madison County conviction. He claimed trial counsel told him that his guilty plea would only add two years to his sentence. Petitioner believed that he would get credit for the entirety of time served from his previous, unrelated sentence even though the previous sentence began in 2014.

Petitioner claimed he would have gone to trial had he understood his parole eligibility would change after his guilty plea. Petitioner testified that trial counsel was ineffective because the plea agreement he entered was illegal. Petitioner’s plea agreement allowed for jail credit from the date of the offense (August 4, 2017) instead of the date of indictment (July 8, 2018), giving him almost one full year of jail credit. Petitioner acknowledged that the State’s original offer had been to run a ten-year sentence consecutively to his prior sentence. He also acknowledged that the plea agreement specifically listed his jail credit as August 4, 2017 through August 26, 2018, well before he was indicted, which was not typical. Petitioner thanked the trial court for

the jail credit. Petitioner presented no additional proof regarding any other claims raised in his petition.¹

Trial counsel testified that Petitioner's main concern was that he did not want consecutive sentencing. He confirmed the State's initial offer was for an effective ten-year sentence to be served consecutively to Petitioner's previous sentence. Trial counsel stated that TDOC inmates typically received offers of consecutive sentencing and that he handled only one other case that received a concurrent sentence in his fifteen years as a public defender. Trial counsel confirmed that jail credits normally run from the date of indictment but because Petitioner was already in custody and had not been arrested on the new charge, he requested that jail credit be granted from the date of the offense instead of the date of indictment. Trial counsel confirmed that the jail credits were properly reflected in the plea agreement. He testified that Petitioner appeared to be happy with the plea agreement and that Petitioner understood the agreement. Trial counsel denied that he told Petitioner that he would receive jail credit back to 2014 for unrelated convictions, nor had Petitioner told him that this was the expectation.

The post-conviction court denied the petition for post-conviction relief. It is from that denial that Petitioner now appeals.

Analysis

Petitioner argues that trial counsel was ineffective because he allowed Petitioner to enter into a plea agreement that imposed a twelve-year sentence that would run concurrently to the Madison County sentence, and Petitioner's jail credits would not run retroactively to when the Madison County sentence began on June 22, 2014. Petitioner claims that he understood the word concurrent to mean that his sentences would merge completely. The State argues that the post-conviction court properly denied relief.

Post-conviction relief is available for any conviction or sentence that is "void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." T.C.A. § 40-30-103. In order to prevail in a claim for post-conviction relief, a petitioner must prove his factual allegations by clear and convincing evidence. T.C.A. § 40-30-110(f); *Momon v. State*, 18 S.W.3d 152, 156 (Tenn. 1999). "Evidence is clear and convincing when there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Hicks v. State*, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998). On appeal, a post-

¹ The post-conviction court granted Petitioner's pro-se request to amend his petition to also allege a claim of prosecutorial misconduct. The Petitioner also requested the post-conviction court recuse itself, which was denied. These were neither addressed at the evidentiary hearing nor are they issues in this appeal.

conviction court's findings of fact are conclusive unless the evidence preponderates otherwise. *Vaughn v. State*, 202 S.W.3d 106, 115 (Tenn. 2006). Accordingly, questions concerning witness credibility, the weight and value to be given to testimony, and the factual issues raised by the evidence are to be resolved by the post-conviction court, and an appellate court may not substitute its own inferences for those drawn by the post-conviction court. *State v. Honeycutt*, 54 S.W.3d 762, 766-67 (Tenn. 2001). However, the post-conviction court's conclusions of law and application of the law to the facts are reviewed under a purely de novo standard, with no presumption of correctness. *Fields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001).

Both the Sixth Amendment to the Constitution of the United States and article I, section 9 of the Tennessee Constitution guarantee the right of an accused to the effective assistance of counsel. *See Davidson v. State*, 453 S.W.3d 386, 392-93 (Tenn. 2014). In order to sustain a claim of ineffective assistance of counsel, a petitioner must demonstrate that counsel's representation fell below the range of competence demanded of attorneys in criminal cases. *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). Under the two prong test established by *Strickland v. Washington*, 466 U.S. 668, 687 (1984), a petitioner must prove that counsel's performance was deficient and that the deficiency prejudiced the defense. *See State v. Taylor*, 968 S.W.2d 900, 905 (Tenn. Crim. App. 1997) (noting that the same standard for determining ineffective assistance of counsel applied in federal cases also applies in Tennessee). Because a petitioner must establish both elements in order to prevail on a claim of ineffective assistance of counsel, "failure to prove either deficient performance or resulting prejudice provides a sufficient basis to deny relief on the claim." *Henley v. State*, 960 S.W.2d 572, 580 (Tenn. 1997). "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." *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996) (citing *Strickland*, 466 U.S. at 697).

The test for deficient performance is whether counsel's acts or omissions fell below an objective standard of reasonableness under prevailing professional norms. *Strickland*, 466 U.S. at 688; *Henley*, 960 S.W.2d at 579. This Court must evaluate the questionable conduct from the attorney's perspective at the time, *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982), and "should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," *State v. Burns*, 6 S.W.3d 453, 462 (Tenn. 1999).

Even if a petitioner shows that counsel's representation was deficient, the petitioner must also satisfy the prejudice prong of the *Strickland* test in order to obtain relief. The question is "whether counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair." *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993). A petitioner must show that there is a reasonable probability "sufficient

to undermine confidence in the outcome” that, “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Burns*, 6 S.W.3d at 463 (quoting *Strickland*, 466 U.S. at 694).

To satisfy constitutional standards of due process, a guilty plea must be entered knowingly, intelligently, and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). When evaluating the knowing and voluntary nature of a guilty plea, the United States Supreme Court has held that “[t]he standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). In making this determination, the reviewing court must look to the totality of the circumstances. See *State v. Turner*, 919 S.W.2d 346, 353 (Tenn. Crim. App. 1995); *Chamberlain v. State*, 815 S.W.2d 534, 542 (Tenn. Crim. App. 1990). This Court may consider the following circumstantial factors:

the relative intelligence of the defendant; the degree of his familiarity with criminal proceedings; whether he was represented by competent counsel and had the opportunity to confer with counsel about the options available to him; the extent of advice from counsel and the court concerning the charges against him; and the reasons for his decision to plead guilty, including a desire to avoid a greater penalty that might result from trial.

Blankenship v. State, 858 S.W.2d 897, 905 (Tenn. 1993). “[A] plea is not ‘voluntary’ if it results from ignorance, misunderstanding, coercion, inducements, or threats.” *Ward v. State*, 315 S.W.3d 461, 465 (Tenn. 2010). “Before a Tennessee court can accept any guilty plea, the court must determine that the defendant is pleading guilty voluntarily and with an understanding of the nature of the plea and its consequences” and that there is an adequate factual basis for the plea. *Hicks*, 983 S.W.2d 240 at 247. 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.” *Blackledge v. Allison*, 431 U.S. 63, 74 (1977).

Here, the post-conviction court found that Petitioner’s claim that “he would only serve two additional years is simply unbelievable. [Petitioner’s] claim that he should receive credit back to the date he began to serve his Madison County [ten-] year sentence is also not believable.” The post-conviction court found that Petitioner was looking at a twelve to twenty-year sentence to be served consecutively onto the charge in this case, but that trial counsel negotiated a twelve-year sentence that ran concurrently with Petitioner’s previous sentence. The post-conviction court found that trial counsel never told Petitioner that he would get jail credit back to the date of his 2014 sentence. The post-conviction court stated that “advice given [Petitioner] by his trial counsel was well

within the range of competence of competent attorneys.” The post-conviction court found that trial counsel’s performance was not deficient. The record does not preponderate against the post-conviction court’s findings, and Petitioner has failed to prove his factual allegations by clear and convincing evidence. Therefore, we agree with the post-conviction court’s conclusion, and Petitioner is not entitled to relief.

Conclusion

For the foregoing reasons, the judgment of the post-conviction court is affirmed.

TIMOTHY L. EASTER, JUDGE