

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs September 4, 2019

FILED
11/08/2019
Clerk of the
Appellate Courts

SHAUN ROYAL HILL v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Tipton County
No. 7697 Joe H. Walker, III, Judge**

No. W2019-00240-CCA-R3-PC

Petitioner, Shaun Royal Hill,¹ was convicted by a Tipton County jury of rape. He was sentenced to fifteen years in confinement. Petitioner filed a pro se petition for post-conviction relief and was appointed counsel. The post-conviction court entered an order dismissing the petition after a hearing. On appeal, Petitioner argues that he received ineffective assistance of counsel. After conducting a full review of the record, we affirm the judgment of the post-conviction court.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT L. HOLLOWAY, JR., JJ., joined.

Bo G. Burk, District Public Defender; and David S. Stockton, Assistant Public Defender, Covington, Tennessee, for the appellant, Shaun Royal Hill.

Herbert H. Slatery III, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Mark E. Davidson, District Attorney General; and James W. Freeland, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural History

¹ Throughout the record, there are three spellings of Petitioner's first name: Shaun, Shawn, and Shun. We have chosen to utilize the spelling that appears in the Petitioner's original pro se petition.

Petitioner was indicted and convicted of rape after a jury trial. Petitioner appealed, this Court affirmed the conviction on appeal, and the supreme court denied permission to appeal. *State v. Shaun Royal Hill*, No. W2015-00710-CCA-R3-CD, 2016 WL 3351817, *1 (Tenn. Crim. App. June 9, 2016), *perm. app. denied*. (Tenn. Sept. 23, 2016). Petitioner filed a pro se petition for post-conviction relief and was appointed counsel. Petitioner's counsel did not amend the petition.

The post-conviction hearing was held on March 5, 2018. Petitioner testified that he thought trial counsel should have objected to the State's opening statement because the State told the jury about the charges against Petitioner before the jury "even got a chance to even see my side of the story." Petitioner testified that trial counsel should have objected when the victim testified that Petitioner seemed intoxicated. Petitioner conceded that lay witnesses can testify to their opinion and do not need to be experts, but he claimed that trial counsel should have objected anyway. Petitioner then testified that trial counsel did not obtain an expert witness to testify about the side effects of bipolar disorder medications. He felt the victim would be more prone to lying about the events because she was bipolar and took medication. Petitioner testified that trial counsel should have moved for the judge to recuse himself based on the evidence that was admitted at the trial, but Petitioner could not point to any specific behavior or unfavorable ruling that would cause the judge to recuse himself. Petitioner testified that trial counsel was ineffective in picking members of the jury, as women made up the majority of the jury. He stated that he told trial counsel he did not want the women on the jury, but trial counsel told him that majority-women juries were good in this type of case.

Trial counsel testified that objections to opening statements are very rare and that he did not recall having any reason to object during the State's opening statement. Trial counsel testified that he did not look into bipolar disorder. He had no information that would cause him to know that the victim was on medication for bipolar disorder or that she even had any mental illness. Trial counsel stated that it was a trial tactic to pick a jury made primarily of women based on his conversations with multiple defense attorneys.

The post-conviction court found that Petitioner failed to show any statements by the prosecutor that were objectionable or subject to a mistrial and that Petitioner failed to show why the victim's testimony about Petitioner's intoxication would be objectionable. The post-conviction court also found that Petitioner failed to show that trial counsel was deficient or that any deficient performance was prejudicial. Post-conviction relief was denied, and the petition dismissed. On March 5, 2018, in the order dismissing the petition, counsel was appointed to represent Petitioner on appeal if he decided to appeal the post-conviction court's decision. No notice of appeal was filed. On January 18, 2019, Petitioner filed a motion for delayed appeal, which this Court granted.

Analysis

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-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).

Petitioner argues that he received ineffective assistance of counsel at trial because trial counsel failed to move for a mistrial when the State elicited testimony from a lay witness that Petitioner was intoxicated, failed to move for a mistrial during the opening statements of the State prosecutor, failed to move for the trial judge to recuse himself, failed to object to the makeup of the jury and the number of jurors who had previously served on prior trials, and failed to obtain funding to hire an expert on the side effects of bipolar medication. In his brief, though, Petitioner seems to agree with the decision of the post-conviction court regarding the admissibility of the victim’s testimony about Petitioner’s intoxication, that there was no basis for an objection regarding the State’s opening statement, and that “nothing in general or in specific could be presented to demonstrate that trial counsel . . . was ineffective for failing to request that the [trial judge] recuse himself.” Petitioner also seems to agree that the question concerning the makeup of the jury had previously been decided by this Court, *see Shaun Royal Hill*, 2016 WL 3351817, at *8, and that no evidence was introduced to support the expenditure of funds for an expert witness regarding bipolar disorder.

As an initial matter, Petitioner has failed to cite any legal authority supporting his arguments in his brief, including failing to even mention the *Strickland* standard for ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). In failing to do so, Petitioner has waived all of his issues. *See* Tenn. R. Ct. Crim. App. 10(b); *State v. Bonds*, 502 S.W.3d 118, 144 (Tenn. Crim. App. 2016). Moreover, despite acknowledging that he has the burden of showing that counsel’s performance was

deficient and that the deficiency was prejudicial, Petitioner concedes that the post-conviction court correctly ruled on each of his issues yet “asks that the court review the transcript of the Petition for Post[-]Conviction Relief and determine whether the findings of [the post-conviction court] were erroneous or an abuse of discretion or so egregiously wrong that it would be manifestly unjust to allow his findings to stand.” “It is not the role of the courts, trial or appellate, to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *Sneed v. Bd. of Prof’l Responsibility of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2016). Because Petitioner has waived and conceded all of his issues on appeal,² he is not entitled to relief.

Conclusion

Based on the foregoing, we affirm the judgment of the post-conviction court denying relief.

TIMOTHY L. EASTER, JUDGE

² If post-conviction counsel believed that Petitioner’s appeal was frivolous, he should have moved to withdraw from representation pursuant to Rule 22 of the Rules of the Court of Criminal Appeals. *But see* Tenn. Ct. Crim. App. R. 22(B) (“A ‘frivolous’ appeal is not merely one that is likely to be unsuccessful.”). Otherwise, “[c]ounsel’s role as an advocate requires that counsel support the appeal to the best of counsel’s ability.” Tenn. Ct. Crim. App. R. 22(A). However, Petitioner does not have a constitutional right to the effective assistance of post-conviction counsel. *See Stokes v. State*, 146 S.W.3d 56, 60 (Tenn. 2004).