

**IN THE CIRCUIT COURT OF TENNESSEE
SIXTEENTH JUDICIAL DISTRICT AT MURFREESBORO**

TAMIR CLARK,)	
)	
Petitioner,)	
)	NO. 70407
v.)	
)	(Post-Conviction)
STATE OF TENNESSEE,)	
)	
Respondent.)	

ORDER DENYING POST-CONVICTION RELIEF

This matter came on to be heard on February 26, 2014, upon the Petition for Post-Conviction Relief filed by TAMIR CLARK on August 23, 2013, as amended on December 16, 2013. After examining the Petition, transcript, and other records relating to Mr. Clark’s conviction in Case No. F-66462, and further considering the testimony of the Petitioner and trial counsel, and arguments of counsel, the Court hereby DENIES post-conviction relief in accordance with the following findings of fact and conclusions of law:

I. LAW

The Sixth Amendment of the U.S. Constitution and Art. I, Section 9 of the Tennessee Constitution both guarantee the right to “reasonably effective” assistance of counsel, which is assistance that falls “within the range of competence demanded of attorneys in criminal cases.” Strickland v. Washington, 466 U.S. 668, 687 (1984); *see also* Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975).

In order to prevail on a claim of ineffective assistance of counsel, the petitioner must establish two prongs: (1) that counsel’s performance was deficient; and (2) that the deficient performance prejudiced the defense. Strickland, *supra*, at 687. The petitioner’s failure to

establish either prong is fatal to a claim of ineffective assistance of counsel. Goad v. State, 938 S.W.2d 363, 370 (Tenn. 1996).

To establish the first prong of deficient performance, the petitioner must demonstrate that the attorney's "acts or omissions were so serious as to fall below an objective standard of reasonableness under prevailing professional norms." Vaughn v. State, 202 S.W.3d 106, 116 (Tenn. 2006) (internal quotation marks and citation omitted). Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law. Baxter, supra, at 934-35. A reviewing Court "must be highly deferential and must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." State v. Honeycutt, 54 S.W.3d 762, 767 (Tenn. 2001) (internal quotations and citation omitted). Counsel will not be deemed ineffective merely because a different strategy or procedure might have produced a more favorable result. Rhoden v. State, 816 S.W.2d 56, 60 (Tenn. Crim. App. 1991).

To establish the second prong of prejudice, the petitioner must prove a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. Vaughn, supra, at 116. A "reasonable probability" is a probability that is sufficient to undermine confidence in the outcome. Strickland, supra, at 694. In the context of a guilty plea, the "prejudice" prong is satisfied if the defendant shows that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

In a post-conviction relief evidentiary hearing, the petitioner has the burden of proving the allegations of fact by "clear and convincing evidence." T.C.A. § 40-30-110(f). Evidence is clear and convincing when there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. Grindstaff v. State, 297 S.W.2d 208, 216 (Tenn. 2009).

There is a rebuttable presumption that a ground for relief not raised before a Court of competent jurisdiction in which the ground could have been presented is waived. Id.

II. FACTS

In the case at bar, the Petitioner alleges that his trial counsel, Ray White (of the Public Defender's Office), rendered ineffective assistance in connection with his guilty plea. The Petitioner pled guilty to Especially Aggravated Kidnapping, Arson, Especially Aggravated Robbery, and Attempted Murder in the First Degree on November 21, 2012, and pursuant to the terms of his Negotiated Plea Agreement (Exhibit 2), received concurrent sentences of: 25 years at 100% (Especially Aggravated Kidnapping); 5 years at 30% (Arson); 25 years at 100% (Especially Aggravated Robbery); and 25 years at 100% (Attempted Murder in the First Degree). These concurrent sentences were to be served consecutively to a parole violation that Mr. Clark was serving at the time of this plea agreement. In connection with this plea agreement, Counts 1 (Aggravated Burglary), 3 (Aggravated Sexual Battery), 4 (Aggravated Sexual Battery), and 6 (Setting Fire to Personal Property) of the Petitioner's Indictment were dismissed.

The Petitioner asserts that his trial attorney was ineffective in explaining his case to him and by failing to seek an additional mental health evaluation. Additionally, Petitioner asserts that his plea was not entered knowingly or voluntarily, because his medication caused him to be in a haze and unable to understand the plea process.

A. Petitioner's Testimony

The Petitioner testified that Mr. White came to the jail and met with him twice in two years, and that he tried to "fire" Mr. White due to a lack of communication. The Petitioner stated that he wrote a "letter" to the Court Clerk regarding Mr. White's lack of communication, but that when he went to Court, he told the Trial Judge that he had decided to withdraw his motion to

terminate Mr. White. During his post-conviction testimony, the Petitioner acknowledged that, during their meetings, Mr. White explained the State's burden, and the minimum and maximum possible penalties, and further told him that he was a career offender, although he did not explain what that meant. Additionally, Petitioner testified that Mr. White reviewed the discovery and trial strategy with him, including discussing the DNA evidence with him and the blood that was found on his clothing.

With regard to the plea agreement, Petitioner testified that Mr. White read the plea petition to him, that he understood it, and that he asked Mr. White no questions about it. Petitioner further testified that it was his decision to enter his plea, but that he did so based on Mr. White's advice, as he assumed that Mr. White had his best interests at heart. Petitioner testified that he pled guilty because he was, in fact, guilty; he never told Mr. White that he was innocent. Petitioner acknowledged that, as part of his plea agreement, Mr. White negotiated the dismissal of several charges, and also obtained the State's agreement to recommend concurrent sentencing. During the plea acceptance hearing, the Petitioner told the Trial Court that he had no gripes or complaints about Mr. White.

With regard to his mental condition, the Petitioner testified that had been treated at mental health facilities twice in the past: initially, as a juvenile aged 13 or 14, he was treated for depression for 30 days at a facility in Chattanooga; subsequently, during the General Sessions phase of this case, he was treated for paranoid schizophrenia for 30 days at Middle Tennessee Mental Health Institute. Petitioner believes that Mr. White was aware of his mental issues because Mr. White had previously represented him in Juvenile Court. Further, according to the Petitioner, Mr. White told him that he had reviewed the medical records from General Sessions

Court,¹ and that Mr. White “brought up” a mental evaluation in their discussions, but the evaluation never happened. Petitioner testified that, at the time of his plea, he was taking thorazine, which caused drowsiness and slow comprehension; according to the Petitioner, the thorazine “takes me to another world.” Petitioner stated that he had been taking thorazine for a couple of months, and that it was being administered by the Jail. Petitioner further testified that he did not tell the Trial Judge, District Attorney, or Mr. White about this medication on the day of the plea hearing. Petitioner acknowledged that the Trial Judge asked him questions at the plea hearing regarding whether he was entering his plea freely and voluntarily; however, Petitioner testified that he lied to the Court in his responses to these questions, and although he professed to have understood the proceedings at the time, he was really just “going through the motions.” Finally, Petitioner testified that he no longer takes thorazine, and that he has more clarity now.

B. Trial Counsel’s Testimony

The Petitioner’s trial counsel, Ray White, testified that he has been licensed to practice law since 1997 or 1998, has represented thousands of defendants, has conducted approximately 30 jury trials, and has handled thousands of pleas. Mr. White first came across the Petitioner in Juvenile Court in the late 1990s or early 2000s. Mr. White testified that he met with the Petitioner 10-15 times during this case, noting that most of his work is not done at the jail on cases like this one. Additionally, Mr. White testified that he received discovery from the State, and discussed the discovery and evidence with the Petitioner. Mr. White believed that the Petitioner had “great exposure” in this case, particularly in light of the DNA evidence against him, the fact that the victim recognized him, and also due to the existence of a letter that Petitioner had written to his father from jail, admitting to the facts of the crime and begging for

¹ The Public Defender’s Office represented the Petitioner in both General Sessions and Circuit Court, although a different attorney handled the General Sessions phase.

forgiveness. Mr. White testified that he discussed all of these factors with the Petitioner, and that the Petitioner understood the evidence that the State had against him. Mr. White further testified that he explained the possible range of punishment to the Petitioner, and told the Petitioner that if he went to trial, he risked dying in prison; nevertheless, Mr. White testified that he was prepared to try this case, and in fact, a trial date had been scheduled before the Petitioner decided to plead guilty.

With regard to the Petitioner's mental health, Mr. White testified that he had read the Petitioner's psychological evaluations over the years, including the evaluation conducted during the General Sessions phase of this case, which was contained in the Public Defender's office file. Mr. White stated that he never thought that the Petitioner did not understand what he was telling him. While unaware of the Petitioner's exact diagnosis, Mr. White presumed that Petitioner was on medications based on his mental health history; however, Mr. White did not discuss the possible side effects of any medications with the Petitioner. Mr. White acknowledged discussing an additional psychological evaluation with the Petitioner, but stated that he planned to address the Petitioner's mental issues as a mitigating factor at the sentencing hearing, rather than at trial, because diminished capacity and insanity were ruled out at the General Sessions level.

Mr. White testified that the Petitioner had over one day to consider the State's offer, that he understood the plea petition, and that he had no trouble answering the Trial Judge's questions during the plea acceptance hearing. In Mr. White's opinion, the Petitioner would not have fared well at trial, as he had no defenses to the charges against him.

III. ANALYSIS

This Court finds that the Petitioner has failed to meet his burden of showing, by clear and convincing evidence, that his trial counsel's performance was deficient or that his guilty plea was not knowingly and voluntarily entered.

With regard to Mr. White's performance, Petitioner has not demonstrated by clear and convincing evidence that Mr. White was ineffective in explaining his case to him or ineffective by not seeking an additional mental health evaluation. The Court finds Mr. White's testimony to be credible. Mr. White thoroughly explained the discovery, evidence, State's burden of proof, and the possible range of punishment to the Petitioner. The transcript of the plea hearing shows that the Petitioner told the Trial Judge that he had no gripes or complaints against Mr. White, and that Mr. White had explained to him the range of punishment, State's burden of proof, and any defenses he might have. (See Exhibit 1, p. 7, ll. 1-8). Mr. White was very familiar with the Petitioner, due to his prior representation of the Petitioner in Juvenile Court, and was aware that the Petitioner had previously received mental health treatment and evaluations, both as a juvenile and at the General Sessions level in this case; nonetheless, in his interactions with the Petitioner, Mr. White never thought that the Petitioner did not understand what he was telling him. Mr. White likewise did not observe any behavior by the Petitioner that caused him to doubt the Petitioner's ability to understand the plea petition, or that caused the Petitioner any problems while answering the Trial Judge's questions during the plea acceptance hearing. Mr. White's strategic decision to raise the Petitioner's mental health as a mitigating factor during the sentencing phase of the case was reasonable, considering that diminished capacity and insanity were ruled out at the General Sessions level. This Court finds that Mr. White met and exceeded all standards of competency for criminal defense attorneys in Tennessee and any other state. Additionally, the Court finds that Mr. White fully apprised himself of the facts and law applicable to the Petitioner's case, and explored all potential strategies and defenses. Mr. White was ready to try the Petitioner's case, but the Petitioner made a rational, informed, voluntary decision to enter a plea agreement instead.

With regard to the voluntariness of the guilty plea, the Petitioner argues that he was taking thorazine, which caused drowsiness and slow comprehension. However, the Petitioner never told his attorney, the District Attorney, or the Trial Judge that he was taking this medication. Moreover, the trial judge carefully explained all of the Petitioner's rights before accepting his plea, and specifically inquired as to whether the Petitioner was entering the plea freely and voluntarily, whether the Petitioner understood the negotiated plea agreement, and whether the Petitioner had any questions about the agreement. (See Exhibit 1, pp. 6-8). Only after satisfying himself as to these factors did the Trial Judge accept the Petitioner's plea and approve the agreement. (See Exhibit 1, pp. 9-11). Although the Trial Judge did not specifically ask the Petitioner whether he was taking any medications during the plea colloquy, the Petitioner has provided this Court with no authority to suggest that such is required. The Trial Judge in this case was satisfied, based upon his questioning of the Petitioner in open Court, that the plea was entered knowingly and voluntarily; this Court finds no proof to the contrary. Moreover, it is well-settled that a petitioner's bare allegations, unsupported by medical testimony, about the use of psychiatric drugs is insufficient to support a claim that a guilty plea was not knowingly and voluntarily entered. See State v. Bumpas, 2010 WL 5140673 (Tenn. Crim. App. 2010), *perm. app. denied* 4/14/11.

IV. CONCLUSION

The Petitioner has failed to prove that his trial counsel's performance was deficient in any way. As the Petitioner has failed to meet his burden under the first prong of the Strickland test, it is unnecessary to examine the second prong, and the Petitioner's claim must fail. See Goad, *supra*, at 370. Petitioner has also failed to prove that his guilty plea was not knowingly and voluntarily entered. Accordingly, the defendant's petition for post-conviction relief is not well-taken, and the same is hereby DENIED.

IT IS SO ORDERED.



M. KEITH SISKIN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Order has been mailed, postage prepaid, to the following:

J. Paul Newman, Esq.
Assistant District Attorney General
320 West Main Street, Suite 100
Murfreesboro, TN 37130

Thomas Bray, Esq.
Attorney for Petitioner
108 North Church Street
Murfreesboro, TN 37130

This the _____ day of _____, 20____.

Deputy Clerk