

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

DERRICK CAMPBELL,)	
)	
Petitioner,)	
)	NO. 67160
v.)	
)	
STATE OF TENNESSEE,)	
)	
Respondent.)	

ORDER DENYING POST-CONVICTION RELIEF

This matter came on to be heard on October 3, 2013, upon the Petitioner’s request for post-conviction relief filed on November 8, 2011. After examining the Petition, transcript, and other records relating to Mr. Campbell’s conviction in Case No. F-63746, 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,¹ Jeff Burton and Russell Perkins, rendered ineffective assistance in connection with his guilty plea. The Petitioner pled guilty to Murder in the Second Degree on November 12, 2010, and pursuant to the terms of his Negotiated Plea Agreement (Exhibit 3), was sentenced to serve 30 years at 100%. In connection with this plea agreement, Counts 2-6 of the Petitioner's Indictment were dismissed. The Petitioner asserts that his trial attorneys were ineffective because: (1) they did not visit with him enough before he entered his plea; (2) they did not obtain his wife's phone records during discovery; and (3) they communicated the State's offer to him as 25 years to serve, whereas the actual offer on the morning of the plea date turned out to be 30 years to serve.

A. Testimony of Mr. Campbell

The Petitioner testified that Mr. Burton came to the jail and met with him 4-5 times, and that Mr. Perkins came to the jail and met with him "once or twice." In all, the Petitioner testified that he met with his attorneys a total of 6 times, "if that many." The Petitioner believes that his attorneys should have come to see him more often, and should have stayed longer each time. The Petitioner testified that he reviewed his discovery with Mr. Burton at the jail for about two hours. The Petitioner further testified that he filed a bar complaint against his attorneys, which prompted them to come visit him; however, the Petitioner further testified that his relationship with his attorneys had improved, and was "good" at the time of the plea hearing. With regard to his wife's phone records, the Petitioner testified that he wanted his attorneys to obtain those records, but they failed to do so. With regard to the length of sentence offered by the State, the Petitioner testified that Mr. Burton came to the jail and told him that the State's offer was 25

¹ The Petition also lists the Petitioner's General Sessions Court public defender, Billie Zimmerman, but there were no specific allegations made against Ms. Zimmerman in the Petition or during the hearing. Accordingly, to the extent that the Petitioner may be asserting any claims against Ms. Zimmerman, such claims have been waived.

years, and that he advised Mr. Burton that he would accept that offer; however, when he went to Court the next day for his plea hearing, Mr. Burton told him that the State's offer was 30 years at 100%. The Petitioner was "mad" that the State's offer had changed from 25 years to 30 years, but he did not talk to his attorneys about the situation, nor did he inform the trial judge of his concerns. The Petitioner recalls testifying at the plea hearing that he had no gripes or complaints against his attorneys, but he nonetheless believed that his attorneys would not fight for him at trial. The Petitioner testified that he decided to accept the State's offer because he did not want to put his family through a lengthy trial, and he was afraid of possibly getting more time if he went to trial. With regard to possible defenses, the Petitioner testified that he had none, and that he never denied killing the victim; he was unsure whether the victim was armed at the time of the shooting, but he recalled that the victim "talked really crazy" to him, and was in his (the Petitioner's) house, with his (the Petitioner's) wife.

B. Testimony of Billie Zimmerman

The Petitioner's General Sessions Court public defender, Billie Zimmerman, testified that she has worked for the Public Defender's office for approximately 10 years. Ms. Zimmerman testified that she met with Mr. Campbell in a holding cell adjacent to the general sessions courtroom on the day of the preliminary hearing; Ms. Zimmerman told Mr. Campbell that he could either have a preliminary hearing or waive that hearing, and that such a hearing was essentially a source of discovery rather than a hearing on the merits of the case. A preliminary hearing was held, during which Ms. Zimmerman asked many questions of the witnesses, a young lady and a detective. At the conclusion of the preliminary hearing, the general sessions judge found probable cause. Ms. Zimmerman does not recall whether she had any discussions with Mr. Campbell during the hearing itself, but she stated that Mr. Campbell never told her that he did not do the shooting, or that he was somewhere else at the time of the shooting.

C. Testimony of Jeff Burton

The Petitioner's lead trial court public defender, Jeff Burton, testified that he has worked for the Public Defender's office for 21 years, and that this was not his first murder case. Mr. Burton testified that he met with the Petitioner on 12/15/09, 2/15/10, 4/8/10, 8/9/10, 9/9/10, and 11/11/10. Included in these dates was a four-hour meeting at the jail (2/15/10), during which Mr. Burton reviewed the discovery with the Petitioner. Additionally, Mr. Burton testified that he met with his co-counsel,² Mr. Perkins, in January of 2010 to discuss the facts of the case and potential defenses. There did not appear to be a self-defense claim, as the victim was unarmed; the only possible defense was that the Petitioner was in love with a woman, and that she was there with another man (the victim). Mr. Campbell never denied being the shooter, or being present at the time of the shooting. Mr. Burton met with his investigator, a Mr. Dinkins, in January 2010, during which time they discussed communicating with several potential witnesses, including Mr. Campbell's parents, sister, barber, and a lady to whose house the Petitioner went after the shooting. Mr. Burton and Mr. Perkins had a follow-up meeting with Mr. Dinkins in November of 2010. Mr. Burton wrote letters to the Petitioner on 12/4/09, 1/20/10, 2/16/10, 6/10/10, 6/16/10, and 10/19/10. Mr. Burton stated that the Petitioner wanted him to file a speedy trial motion, but he did not do so because, upon speaking with the Petitioner, he determined that such a motion would not be in the Petitioner's best interests. After the Petitioner filed a bar complaint, Mr. Burton met with the Petitioner, who indicated that he was satisfied, and the complaint was resolved.

Mr. Burton testified that the State "wouldn't move" off the Second Degree Murder charge in the plea negotiations.³ During their November 11, 2010 meeting, Mr. Burton and the

² Mr. Burton and Mr. Perkins typically work together on homicide cases.

³ As reflected by Exhibit 4, the State's initial offer was for the Petitioner to plead guilty to premeditated murder and receive a life sentence.

Petitioner again discussed the State's offer, which had been open "for some time," and Mr. Burton explained the difference between 100% and 30%, and further explained what "pleading out of range" meant. Mr. Burton does not recall the State offering 25 years or Range I offender status. The Petitioner informed Mr. Burton that he would take the deal. The next day, Mr. Burton went over the Negotiated Plea Agreement⁴ with the Petitioner, and stood with the Petitioner in Court during the entry of the plea. According to Mr. Burton, the Petitioner never seemed confused about the plea; Mr. Burton characterized the Petitioner as intelligent, and opined that the Petitioner fully understood the charges, what the State would have to prove, and the possible ramifications of a trial. The Petitioner did not mention any confusion during or after the entry of his plea. Mr. Burton further testified that he never pushes any of his clients to take a plea; he always tells them that it is their decision. In the present case, Mr. Burton opined that the Petitioner was exposed to a total possible sentence of 65 years, and that the ultimate plea agreement was the result of his adequate and effective representation. Mr. Burton testified that he understood the case and the law, discussed possible defenses with the Petitioner, and was prepared for trial.⁵ To this day, Mr. Burton believes that Mr. Campbell committed First Degree Murder.

D. Testimony of Russell Perkins

Russell Perkins, who acted as co-counsel with Mr. Burton, testified that he has worked for the Public Defender's office for 24 years, and has tried several murder cases. Mr. Perkins and Mr. Burton are the most experienced attorneys at the office of the Public Defender. Mr. Perkins met with the Petitioner 3-4 times with Mr. Burton, and once alone with the Petitioner at the jail. Mr. Perkins never had any problems getting along with the Petitioner, and, in fact, does

⁴ The Petitioner signed both the Negotiated Plea Agreement (Exhibit 3) and the Judgments (Exhibit 2).

⁵ The trial was scheduled to commence on November 16, 2010.

not recall the Petitioner filing a bar complaint during the pendency of this case. Mr. Perkins filed several pre-trial motions on behalf of the Petitioner. Mr. Perkins stated that this case was ready for trial, and that he was prepared to try the case; the Public Defender's office had thoroughly investigated this case and spoken to potential witnesses. On the plea date, Mr. Perkins spoke with the Petitioner regarding the State's offer to serve 30 years, as well as what could happen if he elected not to take the offer. According to Mr. Perkins, the Petitioner decided that he did not want to risk getting more time, so he decided to take the offer. Mr. Perkins testified that he has never told any of his clients that they have to enter a guilty plea, and that Mr. Campbell's decision to do so in this case was solely his decision. In Mr. Perkins' opinion, the Petitioner understood what he was doing on the plea date; had he (Mr. Perkins) believed otherwise, he would have informed the trial court.

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. Essentially, the Petitioner has asserted that his trial attorneys did not meet with him enough during the pendency of his case, did not investigate a potential defense that may have come to light by examining his wife's phone records, and miscommunicated the State's offer on the eve of his plea hearing. This Court specifically accredits the testimony of Mr. Burton and Mr. Perkins, and finds that they met and exceeded all standards of competency for criminal defense attorneys in Tennessee and any other state. Additionally, the Court finds that Mr. Burton and Mr. Perkins fully apprised themselves of the facts and law applicable to the Petitioner's case, and that they explored all potential strategies and defenses. This Court fails to grasp the significance of the Petitioner's wife's phone records, particularly in light of the Petitioner's own testimony that he truly had no defense to the killing; even if the phone records showed a pre-existing relationship between the

wife and the victim, such would not create a self-defense claim or eliminate the element of premeditation underlying the First Degree Murder charge. Mr. Burton and Mr. Perkins were ready to try the Petitioner's case, and were prepared to "fight" for Mr. Campbell at trial; however, Mr. Campbell made a rational, informed, voluntary decision to enter a plea agreement instead.

Moreover, the transcript of the plea hearing shows that the Petitioner told the trial judge that he was satisfied with his attorneys, and had no gripes or complaints against them. (See Exhibit 1, p. 7, ll. 6-21). The trial judge carefully explained all of the Petitioner's rights before accepting his plea. (See Exhibit 1, pp. 8-9). Although the trial judge apparently misspoke during the plea colloquy by announcing the Petitioner's sentence as "30 years in the state penitentiary as a range one, 30 percent offender" (See Exhibit 1, p. 11, ll. 16-18), he immediately corrected himself by stating, "As I said this will be 30 years at 100 percent to serve." (See Exhibit 1, p. 11, ll. 22-23). The trial judge then immediately asked the Petitioner, "Do you have any question of me, Mr. Campbell?" to which the Petitioner responded, "No, sir." (See Exhibit 1, p. 12, ll. 1-3).

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.

IV. CONCLUSION

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:

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This the ____ day of _____, 20 ____.

Deputy Clerk