

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MAY 1998 SESSION

JOHN A. STINNETT, JR.,)	
Appellant,)	C.C.A. NO. 01C01-9709-CC-00437
)	
VS.)	RUTHERFORD COUNTY
)	(No. F-39220 Below)
)	
STATE OF TENNESSEE,)	The Hon. James K. Clayton, Jr.
Appellee.)	(Denial of Post-Conviction Relief)

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OPINION FILED _____

AFFIRMED PURSUANT TO RULE 20

JERRY L. SMITH, JUDGE

O P I N I O N

The petitioner, John A. Stinnett, Jr., appeals the trial court's denial of his petition for post-conviction relief. In this appeal of right, the petitioner contends that his pleas were neither knowingly nor voluntarily made due to the ineffective assistance of his attorney. Based on our review of the briefs and of the entire record in this cause, we conclude that this is an appropriate case for affirmance under Rule 20, Tennessee Court of Criminal Appeals Rules.

After being indicted on charges of first-degree murder and conspiracy to commit first-degree murder, the petitioner pled guilty to second-degree murder and especially aggravated kidnapping and was sentenced as a Range I, standard offender, to consecutive 20-year sentences in the Tennessee Department of Correction.

The issue raised in this appeal is whether the trial court erred by denying post-conviction relief based on the petitioner's claim that his guilty plea was not knowing and voluntary. Specifically, the petitioner contends that he did not understand his rights and felt compelled to plead guilty because trial counsel threatened to resign if the case went to trial and because trial counsel told the petitioner that he could receive post-conviction relief on his guilty plea for especially aggravated burglary.

In order to receive post-conviction relief on the basis of ineffective assistance of counsel, the petitioner must first establish that the services rendered or the advice given was below "the range of competence demanded of attorneys in criminal cases." Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). Second, he must show that the deficiencies "actually had an adverse effect on the defense." Strickland v. Washington, 466 U.S. 668, 693, 104 S.Ct. 2052, 2067, 80 L.Ed.2d 674 (1984). Moreover, the petitioner has the burden to show that the evidence preponderates against the findings of the trial court. Clenny v. State, 576 S.W.2d 12, 14 (Tenn. Crim. App. 1978). Otherwise, the findings of fact by the trial court are conclusive. Graves v. State, 512 S.W.2d 603, 604 (Tenn. Crim. App. 1973). In post-conviction claims, the credibility of the witnesses and the weight and value to be given their testimony is within the exclusive authority of the trial court. Taylor

v. State, 875 S.W.2d 684, 686 (Tenn. Crim. App. 1993).

At a hearing on the post-conviction petition, trial counsel and the petitioner testified. The proof showed that trial counsel, who had practiced law for over 30 years at the time of this appointment, negotiated a plea agreement for the petitioner. Of the four defendants involved in the case, the petitioner received the least severe sentence due to his earlier cooperation. Trial counsel advised the petitioner to accept the plea agreement because he believed it was in the petitioner's best interest based on the state's case against the petitioner, including the petitioner's statement to the police. Noting that it would have been unethical, trial counsel testified that he never told the petitioner he would withdraw from the case if the petitioner refused to plead guilty. He also testified that he would have advised the petitioner of his constitutional rights.

The petitioner testified that he pled guilty to especially aggravated kidnapping because he thought trial counsel would remove himself from the case and because trial counsel told him that he would obtain post-conviction relief from the plea. Finding that the petitioner was not a credible witness, the trial court denied relief and made the following findings:

It is the Court's finding that [trial counsel's] representation was adequate and effective. The Court also finds that the defendant entered the plea of guilty under oath and stated that he understood and agreed to the conditions of his plea agreement. Therefore, the plea was voluntary and was not coerced.

The evidence does not preponderate against the trial court's findings, and it follows that the petitioner has failed to demonstrate that his pleas were not voluntarily or knowingly entered. In Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), the United States Supreme Court ruled that defendants should be advised of certain of their constitutional rights before entering pleas of guilt, including the right against self-incrimination, the right to confront witnesses, and the right to a trial by jury. Id. at 243. The overriding requirement under Boykin is that the guilty plea must be knowingly and voluntarily made. Id. at 242-44. If the proof establishes that the petitioner was aware of

his constitutional rights, he is entitled to no relief. Johnson v. State, 834 S.W.2d 922, 926 (Tenn. 1992).

As we have previously determined, the petitioner has failed to meet his burden of showing that the evidence preponderates against the trial court's findings. The trial court found, and we have agreed, that the petitioner's trial counsel did not threaten to withdraw from the case if the petitioner refused to enter a guilty plea, nor did he tell the petitioner that the conviction for aggravated kidnapping would be overturned by a post-conviction petition. The hearing on the petitioner's guilty pleas reflects that the trial court advised the petitioner of his constitutional and appellate rights and the fact that he was waiving those rights by pleading guilty. The petitioner indicated at the guilty plea hearing that he understood his rights and that he was voluntarily and knowingly waiving said rights. The trial court did not find the petitioner's explanations at the post-conviction hearing to be credible, and the evidence does not preponderate against that finding.

Accordingly, from the record before this Court, we do not find that the evidence preponderates against the trial court's finding that the petitioner received effective assistance of counsel and that the petitioner's pleas were knowing and voluntary.

IT IS, THEREFORE, ORDERED that the judgment of the trial court is affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules. Because the petitioner is indigent, costs of this appeal are taxed to the state.

JERRY L. SMITH, JUDGE

CONCUR:

GARY R. WADE, PRESIDING JUDGE

DAVID G. HAYES, JUDGE