IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs February 3, 2009

STATE OF TENNESSEE v. MATTHEW WAYNE SORRELLS

Direct Appeal from the Circuit Court for Bedford County
No. 11435 Robert Crigler, Judge

No. M2008-00427-CCA-R3-PC - Filed June 1, 2009

The petitioner, Matthew Wayne Sorrells, appeals the Bedford County Circuit Court's denial of his petition for post-conviction relief. The petitioner, pursuant to a negotiated plea agreement, pled guilty to second degree murder, a Class A felony, and was sentenced to a term of seventeen years in the Department of Correction. On appeal, he contends that his guilty plea was not voluntarily and intelligently entered due to the ineffective assistance of counsel. Specifically, he contends that trial counsel was ineffective by: (1) improperly advising the petitioner regarding the merits of his case and settlement options; (2) failing to investigate and properly advise the petitioner regarding the defense of accident and reduced culpability for intoxication; and (3) unduly pressuring the petitioner to plead guilty. Following careful review of the record, we affirm the judgment of the post-conviction court.

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

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which J.C. MCLIN and CAMILLE R. MCMULLEN, JJ., joined.

Hershell D. Koger, Pulaski, Tennessee, for the appellant, Matthew Wayne Sorrells.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; Charles Frank Crawford, Jr., District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

The facts underlying the petitioner's second degree murder conviction, as recited by the prosecutor and not contested by the petitioner at the guilty plea hearing, are as follows:

The factual basis is that on June 9th of this year a little after 10 p.m., the sheriff's department was dispatched to an address on Old Columbia Road here in Bedford County. The initial call went out as a self-inflicted gunshot wound.

Deputies began to arrive. They first met with Ronny Sharp and Mary Sharp, who I believe are husband and wife. They indicated that they had been driving down Old Columbia Road when they were flagged down by a young man who turned out to be the [petitioner]. He indicated to them that a person who he identified as his grandfather had just shot himself.

They asked about whether he had called 911. He indicated that he had. But he said he didn't know where he was, the address where he was at. So I believe Mr. Sharp volunteered his cell phone to be used to call 911.

I will go ahead and jump ahead a little bit. I will tell you that the communication center, the 911 Center, indicates that the first call they received on this was from the Sharp cell phone. They have no record, and they certainly would have had there been a call, they have no record of a 911 call being made before Mr. Sharp's cell phone was used to make the call.

The deputies entered the home and they saw what appeared to be an elderly gentleman sitting in a recliner and was unresponsive. They could also see blood in the groin area and it appeared to them as though some sort of gunshot wound [was] involved.

About that time the [petitioner] entered from a back door and the [petitioner] began volunteering that the gentleman with the gunshot wound he identified as his grandfather, that they had been out in the backyard, that the victim, Mr. Arnold, had shot the gun up in the air several times and then turned the gun on himself and shot himself in the stomach and then walked back in and sat down in the recliner.

The deputies significantly did not find any weapon, either in the area where the shooting would have taken place outside or by the recliner. Will also tell you later on they did recover a bullet fragment from in the area of the recliner. Every indication was that the shooting took place with Mr. Arnold seated in the recliner.

They also noticed that Mr. Arnold had on dry white socks that were clean, so again it seemed odd to him that he had allegedly been outside in the grass or dirt or whatever and the grass was wet with dew and just shot himself. That, too, did not add up to them.

The other deputies heard that the [petitioner] offered that Mr. Arnold had, before he shot himself, indicated that he was tired of living. He first told them that Mr. Arnold used a .45 on himself but later he changed that and said it was a revolver.

They ultimately did find under a mini barn outside in the backyard, they noticed a set of tracks walking up to the mini barn in the dew and a set of tracks coming back from it. They went to that area and they found under the mini barn a revolver. There were, I believe, five or six rounds in it. Five spent rounds. Just the shell casing and one unspent unfired round. It was a .357 revolver. It was recovered.

The [petitioner] was then taken into custody at that time and carried to the sheriff's department.

It was not that day, but a later time a few days later, he did give a statement to the sheriff's department. He indicated that he had been at Wal-Mart when Mr. Arnold called him and asked him to come stay with him. You notice I used the term grandfather. I think [the petitioner] viewed Mr. Arnold as a grandfather although I don't think there is actually any kinship there.

But on the night this occurred the [petitioner] was at Wal-Mart. The victim, he said, called him and asked him to come stay with the victim for a couple of weeks.

The [petitioner] said that would be okay. The victim came to Wal-Mart, picked him up, carried him back to what I believe to be a relatively new residence for the victim.

There [sic] got there around 8:30 or 9:00. They had been watching t.v.

I think both the victim and the [petitioner] did some drinking. According to the [petitioner], he noticed a .357 revolver laying on the floor next to Mr. Arnold's chair. The victim asked about taking it outside and shooting it. The victim said that was fine for the [petitioner] to do that.

So the [petitioner] went outside and by his estimation he fired two or three rounds with the gun. He then turned around and walked back inside, handed the gun to the victim. It was at that point the gun went off striking the victim in the lower abdomen or the groin area.

According to the [petitioner], he checked his pulse to see if he was still breathing. He says at this point is when he picked up the phone and called 911. Again there is no record of that call. The [petitioner] said he panicked. He grabbed a kitchen rag and wiped off the gun and ran outside and hid it under the mini barn,

> and he came back inside the house to see if an ambulance had arrived, and then he then went to the road and flagged down a car.
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> Also I will say the revolver is a double action revolver, which means with the hammer down you can still fire it by pulling the trigger. Of course you have to have enough trigger pull to cock the hammer and then actually fire it.
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> The [petitioner] testified at the preliminary hearing that the hammer was in the uncocked position so it would be resting against the firing pin. He testified that he consequently had to pull the trigger enough to cause it to cock the hammer and then fire it.
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> I will tell you that then Detective Jason Parker examined the gun. He is a former Marine sniper. He has pretty extensive knowledge of handguns and [] by his estimation the trigger pull on that was considered a very heavy trigger pull, thus indicating that it would [be] extremely unlikely that with the hammer down in an unfired position that one would accidently pull the trigger enough to cause it to go off, thus making it - - if one pulled the trigger enough from the uncocked position, it would have to be done knowingly.

Based upon these actions, a Bedford County grand jury indicted the petitioner with second degree murder and tampering with evidence. He subsequently pled guilty to second degree murder, and the tampering with evidence charge was dismissed. Pursuant to the negotiated plea agreement, the petitioner was sentenced to seventeen years in the Department of Correction, to be served at 100%. No direct appeal was taken.

The petitioner timely filed a *pro se* petition for post-conviction relief in which he asserted that his guilty plea was not voluntarily and intelligently entered due to the ineffective assistance of counsel. Following the appointment of counsel, an amended petition was filed, which also alleged an involuntary plea based on trial counsel's deficient performance, specifically: (1) improperly advising the petitioner regarding the merits of his case, options regarding settlement, and rights at trial; (2) failing to investigate the defense of accident and reduced culpability, based on the petitioner's ingestion of drugs and alcohol; and (3) unduly pressuring the petitioner to accept the plea agreement. A hearing was held, during which the petitioner and three of the trial attorneys involved in his case testified.

At the hearing, the twenty-two-year-old petitioner testified that he was represented by the Public Defender's Office and that trial counsel only met with him for five to ten minutes at the jail prior to the entrance of his plea. According to the petitioner, he informed trial counsel of the facts of the case, namely that he had accidently shot the victim while under the influence of alcohol and prescription drugs. The petitioner testified that trial counsel informed him that he "should get involuntary manslaughter, something to that nature." The petitioner acknowledged that an

investigator from the Public Defender's Office met with him at the jail and questioned him regarding the incident.

The petitioner testified that on the day he entered his guilty plea, he came to the courthouse believing that he was going to trial. His family was present in the courtroom that day but left because his attorneys informed them that they were only in court to set a trial date. The petitioner testified that, after his family left, the State began making plea offers. The petitioner did not deal with trial counsel. Rather, he dealt with the public defender, who, he asserted, was the person who "got [him] to plead guilty," and a second attorney involved in his case. He testified that he had never spoken with the public defender prior to that day and that the only occasion he spoke with her was that day at the courthouse immediately prior to accepting the plea agreement. The State first offered a deal which the petitioner refused, stating that he needed to speak with his family. The State countered with a seventeen-year offer. According to the petitioner, he still did not want to accept the offer, but he accepted it when the public defender informed him that he was not likely to be successful at trial and could receive twenty-five years. On cross-examination, the petitioner testified that he had been pressured to accept the offer, though he acknowledged that he was aware that it was his decision to make and that he had been informed that the presumptive sentence was twenty years. The petitioner testified that these negotiations took place over a period of two to three hours.

The petitioner testified that, prior to the plea date, he had every intention of proceeding to trial because he did not believe that he had committed murder, therefore, the shooting was accidental. He also testified that when he pled guilty before the trial court, he was unaware of the definition of "knowing," an element of the charged offense. The petitioner acknowledged that, initially, he lied to the investigating officers on the night of the shooting and told them that the victim had committed suicide, that he had wiped the gun clean of prints, and that he had hidden the weapon to conceal his involvement. The petitioner further acknowledged that he had testified at the preliminary hearing against the advice of counsel and that he had been informed by trial counsel that he was bound by the testimony he had given. Part of that testimony was damaging to his theory of the case, as he had testified that he had to cock the hammer of the double action revolver before he shot the victim, which contradicted the theory of an accidental shooting. He also testified that he had been informed by the investigator that the weapon had a heavy trigger pull, which made it more difficult to establish an accidental shooting.

Next, trial counsel testified and contradicted the petitioner's testimony on several key points. Trial counsel testified that he and the petitioner met on at least three occasions and had extended conversations regarding the facts of the case, the petitioner's options, and the legal ramifications. Although the petitioner insisted that the shooting was accidental, trial counsel's investigation did not support such a finding based upon the facts that: (1) the petitioner had initially lied to police; (2) he wiped all fingerprints off the weapon prior to hiding it; and (3) he admitted that he drank alcohol while taking prescription medications. Moreover, trial counsel testified that the investigation revealed evidence of a struggle in the kitchen and that the weapon used in the shooting did not have a "hair trigger" as the petitioner claimed. According to trial counsel, he discussed these issues with the petitioner. He also informed the petitioner that the jury would make the decision based upon the

law and that lesser included offenses would be charged. Trial counsel was not present on the day the petitioner entered his guilty plea. Counsel specifically testified at the post-conviction hearing that he never pressured the petitioner to plead guilty and that he made clear to the petitioner that the decision whether to proceed to trial was the petitioner's decision.

A second assistant public defender involved in the petitioner's case also testified at the hearing. He testified that he had "numerous discussions" with the petitioner regarding the case and that the petitioner insisted that the shooting was accidental. However, he testified that there were problems with the petitioner's theory. He testified that he informed the petitioner of the possible range of punishment if he was convicted and told him that he would "very likely" be convicted if he went to trial. However, he denied that either he or the public defender pressured the petitioner to accept the plea. They simply explained the options and informed him that the choice of whether to proceed to trial was his. He testified that both he and the public defender spoke with the petitioner at length on the plea date and answered numerous questions asked by the petitioner. The public defender was called in at his request to ensure that the petitioner understood everything prior to accepting the plea agreement.

Finally, the public defender was called to testify and stated that she was not actively involved in the petitioner's case until the day of the plea. However, even prior to the date the plea was entered, she was aware of the facts of the case and had spoken with her two assistants involved in the case regarding problems with the petitioner's theory. She testified that both she and her assistant met with the petitioner on the day of the plea hearing to explain his legal options to him. They answered the petitioner's questions, and no pressure was placed on the petitioner to accept the offer. However, she did acknowledge that she was very direct with the petitioner and that she discussed the potential problems if the case went to trial. However, she testified that the petitioner was not informed that he could get twenty-five years if he chose to go to trial. She testified that the petitioner appeared to understand what was said to him. She noted that the petitioner rejected the first offer and requested that they approach the State to ask for a better one. He had ample time to consider the offer.

Following the presentation of evidence, the post-conviction court entered an order denying relief. The petitioner now appeals.

Analysis

On appeal, the petitioner contends that his guilty plea was not knowingly and voluntarily entered because he was denied the effective assistance of counsel. In 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 [petitioner]." *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 164 (1970). In making this determination, the reviewing court must look to the totality of the circumstances. *State v. Turner*, 919 S.W.2d 346, 353 (Tenn. Crim. App. 1995); *see also Chamberlain v. State*, 815 S.W.2d 534, 542 (Tenn. Crim. App. 1990). Indeed, a

> court charged with determining whether . . . pleas were 'voluntary' and 'intelligent' must look to various circumstantial factors, such as 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 a jury trial.

Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993).

Once a guilty plea has been entered, effectiveness of counsel is relevant only to the extent that it affects the voluntariness of the plea. In this respect, such claims of ineffective assistance necessarily implicate that guilty pleas be voluntarily and intelligently made. *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985) (citing *Alford*, 400 U.S. at 31, 91 S. Ct. at 164).

To succeed in a challenge for 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 *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), the petitioner must establish (1) deficient representation and (2) prejudice resulting from the deficiency. In the context of a guilty plea, to satisfy the second prong of *Strickland*, the petitioner must show 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." *Lockhart*, 474 U.S. at 59, 106 S. Ct. at 370; *see also Walton v. State*, 966 S.W.2d 54, 55 (Tenn. Crim. App. 1997). The petitioner is not entitled to the benefit of hindsight; may not second-guess a reasonably based trial strategy; and cannot criticize a sound, but unsuccessful, tactical decision made during the course of the proceeding. *Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994). However, this deference to the tactical decisions of trial counsel is dependant upon a showing that the decisions were made after adequate preparation. *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992).

The issues of deficient performance by counsel and possible prejudice to the defense are mixed questions of law and fact. *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). "A trial court's *findings of fact* underlying a claim of ineffective assistance of counsel are reviewed on appeal under a *de novo* standard, accompanied with a presumption that those findings are correct unless the preponderance of the evidence is otherwise." *Fields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001) (citing Tenn. R. App. P. 13(d)). However, *conclusions of law* are reviewed under a purely *de novo* standard, with no presumption of correctness. *Id*. at 458.

As an initial matter, the petitioner contends that the standard of proof required at the post-conviction hearing to establish ineffective assistance of counsel is not by "clear and convincing evidence" but, rather, by "a reasonable probability that the result of the proceeding would have been different." He acknowledges that the "clear and convincing" standard is set out in Tennessee Code Annotated section 40-30-110(f) but argues that the statute is "contrary to Constitutional standards

established by the U.S. Supreme Court." As noted by the State, this assertion has been made by appellate counsel in other cases and has been rejected each time by this court. *See Charles C. Dick v. State*, No. M2007-00542-CCA-R3-PC (Tenn. Crim. App., at Nashville, Sept. 19, 2008); *John R. Thompson v. State*, No. M2007-02035-CCA-R3-PC (Tenn. Crim. App., at Nashville, July 3, 2008); *State v. John Lynch*, No. M2006-02158-CCA-R3-PC (Tenn. Crim. App., at Nashville, Jan. 9, 2008).

Tennessee Code Annotated section 40-30-110(f) prescribes that "[t]he petitioner shall have the burden of proving the allegation of fact by clear and convincing evidence" in a post-conviction hearing. In *John R. Thompson v. State*, this court stated that the statute and the standard set out in *Strickland* do not conflict, noting that

> [a] petitioner must prove disputed factual allegations by clear and convincing evidence. . . . Having resolved that factual dispute, we would then proceed to the two-prong *Strickland* test, analyzing deficiency and prejudice. In other words, "clear and convincing" is the burden of proof. Deficient representation and a reasonable probability of a different outcome is what must be proven. In this respect, the statute is not in conflict with established precedent.

Further, the Tennessee Supreme Court has upheld and applied this statute in numerous cases, and we are bound by the rulings of our supreme court. *See, e.g., Wallace v. State,* 121 S.W.3d 652, 656 (Tenn. 2003); *Nichols v. State,* 90 S.W.3d 576, 586 (Tenn. 2002). Thus, we conclude there is no merit to the petitioner's assertion.

As noted, the petitioner's claim of an involuntary plea is based upon his assertion that he was denied his Sixth Amendment right to the effective assistance of counsel. Specifically, he contends that trial counsel was ineffective in that it: (1) improperly advised the petitioner regarding the merits of his case and his settlement options to the extent that he was unable to meaningfully exercise independent judgment regarding settling the case or proceeding to trial; (2) failed to properly investigate and advise the petitioner regarding the defense of an accident and reduced culpability based upon intoxication; and (3) placed undue pressure on the petitioner to plead guilty.

I. Improper Advice Regarding Merits of the Case/Failure to Investigate

First, the petitioner contends that trial counsel was ineffective in that he failed to adequately advise the petitioner regarding the merits of his case, thereby precluding the petitioner from making an independent judgment of whether to settle the case or proceed to trial. According to the petitioner, this argument also embraces his second issue regarding trial counsel's failure to investigate and advise the petitioner regarding any intoxication or accident defenses. He asserts that the proof is clear and establishes two "recurring constants throughout" the case: (1) the petitioner was adamant that the shooting was an accident; and (2) the attorneys at the Public Defender's Office were adamant that the proof at trial would point to second degree murder. According to the petitioner, trial counsel "wholly dismissed any utilization of intoxication in the defense of the case-and of course, mis-advice to the [p]etitioner was the natural result." He also alleges that trial counsel

"effectively dismissed the theory of an accidental shooting in defending the case, which effectively precluded [the p]etitioner from relying upon accident as a viable tool in the defense of his case." He acknowledges that it "is one thing for [the p]etitioner's counsel to advise [the p]etitioner with respect to their considered judgment in the merits of a particular defense. However, in this case [the p]etitioner's counsel eliminated the use of intoxication at all, and effectively told [the p]etitioner that the defense of an accidental shooting would simply not work."

In its order denying relief, the post-conviction court made the following relevant findings of fact:

> The Public Defender's Office conferred with the Petitioner sufficiently to thoroughly discuss the strengths and weaknesses of the State's case: that the Petitioner initially admittedly lied to authorities and claimed the victim committed suicide, that later the Petitioner testified at his preliminary hearing that he accidently killed the victim, that the murder weapon was a double action revolver with a trigger pull that belied an accidently killing defense as did the Petitioner's admission that he wiped his prints from and hid the murder weapon after killing the victim. While the Petitioner initially minimized the extent of the advice he received about lesser included offenses it is clear from a thorough evaluation of his testimony that he was advised properly. . . . At the plea acceptance hearing the Petitioner said he'd had no difficulty communicating with counsel and that he'd been able to speak with them all that he wanted.
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> Voluntary intoxication is no defense and there is no evidence that involuntary intoxication was involved or that the Petitioner was intoxicated to the extent that he could not have possessed the requisite culpable mental state for second degree murder. Evidence that the Petitioner wiped the murder weapon clean and hid it, as well as his ability to remember the circumstances that brought him and the victim together and details of what happened after the victim's death exclude intoxication as a plausible defense.

Following review of the record, we find nothing which preponderates against the trial court's findings that the petitioner received the effective assistance of counsel. The attorneys involved in the petitioner's case testified that they did not feel, based upon the facts as known, the defense of accidental or involuntary intoxication was viable. Trial counsel testified that he so advised the petitioner regarding the merits of pursuing the defense. Although the petitioner maintained that the shooting was accidental, his own actions at the time of the shooting and later during the case would have seriously brought this theory of defense into question if presented to a jury. The petitioner admittedly lied to police, wiped the weapon used in the shooting clear of fingerprints, and proceeded to hide the weapon. He insisted upon testifying at the preliminary hearing, and his testimony was damaging to the theory because of his statements regarding the weapon.

Moreover, contrary to the petitioner's argument, voluntary intoxication is not a defense, although evidence of such intoxication may be admitted to negate a culpable mental state. T.C.A. § 39-11-503(a) (2006). The petitioner testified that, at the time of the shooting, he was abusing his anxiety and depression medication and was mixing them with alcohol. If accepted as true, the petitioner was voluntarily intoxicated at the time he shot the victim, as voluntary intoxication is defined as "intoxication caused by a substance that the person knowingly introduced into the person's body, the tendency of which to cause intoxication was known or ought to have been known." T.C.A. § 39-11-503(d)(3) (2006). However, no other evidence established this intoxication, and, as testified to by trial counsel, the proof tended to contradict the petitioner's claims, based upon his ability to recall specific details surrounding the shooting and his lying to the police. Trial counsel specifically testified that he did not believe, based upon the facts of the case, that voluntary intoxication was a workable theory to present to the jury. He also testified that he discussed this with the petitioner. It is the duty of trial counsel to confer with their client and advise him on the merits of presenting defenses to the jury. Trial counsel did so in this case, and we, as did the post-conviction court, conclude that the petitioner was adequately informed to make a decision of whether to plead guilty or proceed to trial.

II. Undue Pressure/Involuntary Plea

Next, the petitioner contends that his trial counsel unduly pressured him to plead guilty. The petitioner's assertion is based upon the alleged improper advice regarding defenses, as argued in issue one, and the fact that the public defender told him that he would receive twenty-five years if he proceeded to trial. He argues that his guilty plea was not knowingly and voluntarily entered as a result of the improper advice and the undue influence placed upon him. We disagree.

In denying relief upon this ground, the post-conviction court stated as follows:

> The Petitioner was almost twenty-one years old when he pleaded guilty, dropped out in March of his senior year but later got his GED. He had prior familiarity with criminal proceedings both as an adult and a juvenile. He appeared to be of at least average intelligence at the plea acceptance hearing and from his testimony at the post-conviction hearing. The Petitioner was represented by competent attorneys and received the benefit of counsel not only from the Public Defender . . . but also from her two leading assistants. . . .
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> The trial court accredits their testimony that they never told the Petitioner he would get a twenty-five[-]year sentence if he went to trial.
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> . . . .
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> The Petitioner produced no evidence that coercion, inducements or threats caused him to plead guilty. In fact, in his testimony at the post-conviction hearing the Petitioner admitted knowing that it was his decision to make. . . .

Again, review of the record reveals nothing which preponderates against these findings. As addressed in issue one, we have previously concluded that the advice given to the petitioner regarding his available defenses and the merits of his case was proper and that he was not denied the effective assistance of counsel. Additionally, the post-conviction court specifically accredited the attorneys' testimony that they did not tell the petitioner he would receive a twenty-five-year sentence if he chose to go to trial. It is not the province of this court to reweigh a trial court's credibility determination as that decision is best made by the lower court. *State v. Holder*, 15 S.W.3d 905, 912 (Tenn. 1999). Moreover, the petitioner admitted that he was advised of the possible range if he chose to go to trial and that the decision was his to make. Two of the attorneys testified that prior to his acceptance of the plea, they met at length with the petitioner and answered all his questions in order to ensure his complete understanding of the agreement. Further, nothing in the record negates the court's findings that the petitioner was of average intelligence and had prior experience in the criminal courts. Finally, we note that, at the guilty plea hearing, the trial court was very thorough in its explanation of the petitioner's rights and the possible sentence range. The petitioner indicated that he understood and stated that he was entering the plea of his own free will.

A defendant's plea of guilty constitutes an admission in open court that he committed the acts charged in the indictment. *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 1468 (1970). However, the plea is more than an admission; it is the defendant's consent that judgment of conviction may be entered without a trial. *Id*., 90 S. Ct. at 1469. A defendant's sworn responses to the litany of questions posed by the trial judge at the plea submission hearing represent more than lip service. Indeed, the defendant's sworn statements and admissions of guilt stand as witness against the defendant at the post-conviction hearing when he disavows those statements. Following review of the record, we conclude that the petitioner has failed to establish that the proof preponderates against the findings made by the post-conviction court that he received the effective assistance of counsel and that his plea was entered knowingly and voluntarily.

CONCLUSION

Based upon the foregoing, the denial of post-conviction relief is affirmed.

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JOHN EVERETT WILLIAMS, JUDGE