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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-22-98

MARTHA ROSARIO GONZALES APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered February 8, 2023 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. 66FCR-18-421] HONORABLE STEPHEN TABOR, JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

Martha Rosario Gonzales appeals the Sebastian County Circuit Court order denying her petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2022). On appeal, Gonzales argues that the circuit court erred by denying her ineffective-assistance-of-counsel claims. We affirm.

On March 27, 2018, the State charged Gonzales with possession of methamphetamine with the purpose to deliver, possession of hydrocodone, possession of drug paraphernalia, and possession of marijuana. On July 26, the State amended the criminal information to charge Gonzales as a habitual offender pursuant to Arkansas Code Annotated section 5-4-501(b) (Supp. 2021). The charges stemmed from Gonzales's participation in a controlled buy with a confidential informant.

On August 7, the Sebastian County Circuit Court held a jury trial. At trial, the evidence showed that Detective Bryan Stanley arranged for a confidential informant to engage in a controlled buy of methamphetamine from Rodney Stringer. Detective Stanley testified that while he was sitting with the confidential informant at the location of the controlled buy, Stringer told the informant over the phone that a female named Martha in a gray car had the product. Stanley saw a gray car arrive at the location of the buy. Stanley monitored the meeting over audio feed, and he heard the informant and a female discuss further purchases of methamphetamine. After the gray car left the location of the controlled buy, an officer followed the car until a patrolman stopped it. Gonzales was driving the car, and Daryl Beasley was in the passenger seat. Officers located marked money from the informant in Gonzales's pockets and marijuana and empty Ziploc bags in her purse. Gonzales also retrieved hydrocodone pills and methamphetamine from her pants.

The jury convicted Gonzales of all charges. She was sentenced as a habitual offender to fifty years' imprisonment for possession of methamphetamine with the purpose to deliver, fifteen years' imprisonment for possession of hydrocodone, five years' imprisonment for possession of drug paraphernalia, and one year in the county jail for possession of marijuana, all to be served concurrently.

On June 5, 2019, this court affirmed Gonzales's convictions following the submission of a no-merit brief by Gonzales's appellate counsel. *See Gonzales v. State*, 2019 Ark. App. 321, 578 S.W.3d 727. The mandate was issued on June 25.

On August 23, Gonzales filed in the circuit court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. Gonzales later retained counsel, and on June 4, 2021, Gonzales's counsel filed an amended petition with leave from the court. In the amended petition, Gonzales claimed that her trial counsel was ineffective for (1) failing to move to suppress evidence on the basis of an illegal traffic stop; (2) failing to move to suppress evidence found following Gonzales's custodial statement made without *Miranda* rights; (3) failing to communicate and explain a plea offer; and (4) laboring under a conflict of interest.

On September 20, the court held an evidentiary hearing. Gonzales testified along with her trial counsel, Rita Howard Watkins. On November 2, the circuit court denied Gonzales's petition. On November 28, Gonzales appealed the decision to this court.

This court does not reverse a denial of postconviction relief unless the circuit court's findings are clearly erroneous. *Reed v. State*, 2011 Ark. 115 (per curiam). A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.*

The benchmark question to be resolved in judging an ineffective-assistance-of-counsel claim is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Norris v. State*, 2013 Ark. 205, 427 S.W.3d 626 (per curiam). We assess the effectiveness of counsel under a two-prong standard as set forth by the United States Supreme Court in *Strickland v. Washington*,

466 U.S. 668 (1984). *Lowe v. State*, 2012 Ark. 185, 423 S.W.3d 6 (per curiam). Under the *Strickland* test, a claimant must show that counsel's performance was deficient, and the claimant must also show that the deficient performance prejudiced the defense to the extent that the appellant was deprived of a fair trial. *Id.* A claimant must satisfy both prongs of the test, and it is unnecessary to examine both components of the inquiry if the petitioner fails to satisfy either requirement. *See Pennington v. State*, 2013 Ark. 39 (per curiam).

A petitioner claiming ineffective assistance must first show that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed to the petitioner by the Sixth Amendment to the United States Constitution. *Walton v. State*, 2013 Ark. 254 (per curiam). There is a strong presumption that trial counsel's conduct falls within the wide range of reasonable professional assistance, and an appellant has the burden of overcoming this presumption by identifying specific acts or omissions of trial counsel, which, when viewed from counsel's perspective at the time of the trial, could not have been the result of reasonable professional judgment. *Id.*

To meet the second prong of the test, a claimant must show that there is a reasonable probability that the fact-finder's decision would have been different absent counsel's errors. *Delamar v. State*, 2011 Ark. 87 (per curiam). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.*

On appeal, Gonzales first argues that her trial counsel was ineffective for failing to move to suppress the narcotics and baggies found in her purse and in her pants because the officers discovered them during an illegal traffic stop. She alternatively argues that even if

the stop was proper, the subsequent search of her purse in the vehicle was improper.

To prevail on this challenge, Gonzales must demonstrate that if trial counsel had pursued the motion to suppress, the motion would have been meritorious. *Hamilton v. State*, 2022 Ark. App. 122, 641 S.W.3d 678. We must therefore consider whether a motion to suppress based on this argument would have been successful. *See Hartman v. State*, 2017 Ark. 7, 508 S.W.3d 28 (holding that a Rule 37 petitioner must show, when making a claim of ineffective assistance for failing to raise an objection or make an argument, that the objection or argument would have been successful if made). The circuit court found that such a motion to suppress would have been unsuccessful because the stop was lawful. We agree.

Arkansas Rule of Criminal Procedure 14.1 permits an officer who has reasonable cause to believe that a moving or readily moveable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is on a public way. Reasonable cause, as required by this rule, exists when officers have trustworthy information that rises to more than mere suspicion that the vehicle contains evidence subject to seizure, and a person of reasonable caution would be justified in believing an offense has been committed or is being committed. *Jackson v. State*, 2013 Ark. 201, 427 S.W.3d 607.

In this case, the evidence showed that officers stopped the gray car based on the officer's observation of the vehicle arriving and leaving the controlled buy as well as the information he learned from the confidential informant's phone call and from the audio feed. Specifically, the officer learned that a female named Martha in a gray car had the

product. Given these circumstances, we agree with the circuit court that even if Gonzales's trial counsel had moved to suppress the items due to an illegal stop, the motion would have been unsuccessful because the stop was proper under Rule 14.1.

As to Gonzales's alternative argument concerning the marijuana and baggies located in her purse, the circuit court found that a suppression motion would have been unsuccessful under *Holland v. State*, 71 Ark. App. 84, 27 S.W.3d 753 (2000). In *Holland*, this court cited *Wyoming v. Houghton*, 526 U.S. 295 (1999), and stated that an officer with probable cause to search a car may inspect a passenger's purse found in the car that could conceal the object of the search. *Holland*, 71 Ark. App. 84, 27 S.W.3d 753. The record shows that Gonzales's purse was found inside the car. Accordingly, we hold that the circuit court did not clearly err by finding that trial counsel was not ineffective for failing to move to suppress the marijuana and baggies found in Gonzales's purse.

Gonzales next argues that her trial counsel was ineffective for failing to move to suppress the hydrocodone pills and methamphetamine that she removed from her pants without the benefit of *Miranda* warnings. Specifically, Gonzales removed the items after an officer asked her if she had anything that she did not want "to get caught with at jail." The officer testified at trial that he questioned Gonzales while she was handcuffed in the patrol car "getting ready to go to jail." We again must consider whether a motion to suppress based on this argument would have been successful. *See Hartman*, 2017 Ark. 7, 508 S.W.3d 28. The circuit court found that the officer should have advised Gonzales of her *Miranda* rights

prior to questioning her, but it concluded that a suppression motion would have been unsuccessful due to the inevitable-discovery rule.

The inevitable-discovery rule provides that illegally seized evidence is admissible if the State proves by a preponderance of the evidence that police would have inevitably discovered the evidence by lawful means. *Thompson v. State*, 333 Ark. 92, 966 S.W.2d 901 (1996). Arkansas Rule of Criminal Procedure 12.2 provides that an officer making an arrest and the authorized officials at the police station or other place of detention to which the accused is brought may conduct a search of the accused's garments and personal effects ready to hand, the surface of her body, and the area within her immediate control.

Here, assuming that the officer should have Mirandized Gonzales, we agree with the circuit court that a suppression motion would have been unsuccessful pursuant to the inevitable-discovery rule. At trial, the officer stated that when he questioned Gonzales about having illegal items, she was handcuffed and on her way to jail. Thus, officers would have inevitably and lawfully discovered the contraband during a search pursuant to Rule 12.2. Accordingly, we find no error on this point.

Gonzales next argues that her trial counsel was ineffective for failing to communicate and explain the State's plea offer. She asserts that if trial counsel had properly advised her of the ten-year plea offer, she would have accepted it. She relies on her testimony from the evidentiary hearing that trial counsel did not effectively communicate the offer.

However, trial counsel testified at the evidentiary hearing that she informed Gonzales of a ten-year plea offer, but Gonzales refused to accept it. Trial counsel further testified that

she advised Gonzales of the lengthy sentence she would receive if found guilty at trial as a habitual offender. In denying Gonzales's relief on this point, the circuit court specifically found trial counsel more credible than Gonzales.

This court does not assess the credibility of witnesses. *Id.* Conflicts in testimony are for the fact-finder to resolve, and the circuit court is not required to believe the testimony of any witness, especially that of the accused since she is the person most interested in the outcome of the proceedings. *Id.*; *see also Sanford v. State*, 342 Ark. 22, 27, 25 S.W.3d 414, 417 (2000) (affirming the denial of an infective-assistance-of-counsel claim concerning the communication of a plea deal because the issue "involved a swearing match"). On appeal, Gonzales asks this court to credit her testimony over her trial counsel's testimony. Because we cannot assess the credibility of witnesses, we hold that Gonzales has not established error on this point.

Gonzales's final argument is that her trial counsel was ineffective for laboring under a conflict of interest because trial counsel also represented her codefendant, Darryl Beasley, who was in the car with Gonzales when she was stopped and arrested.

At the evidentiary hearing, trial counsel explained that she initially represented Beasley, but he pled guilty in April 2018—months before Gonzales's August 2018 trial. She further testified that in her closing statement at Gonzales's trial, she argued that the passenger in Gonzales's vehicle was more culpable. The trial transcript and record corroborate this testimony. The circuit court found that because Beasley entered a plea

agreement four months prior to trial, trial counsel did not jointly represent Beasley and Gonzales. The court further found that Gonzales failed to establish prejudice.

We find no error by the circuit court. The supreme court has recognized that requiring or permitting joint representation whereby a single attorney represents codefendants does not per ser violate constitutional guarantees of effective assistance of counsel. *McGahey v. State*, 362 Ark. 513, 210 S.W.3d 49 (2005); *Myers v. State*, 333 Ark. 706, 972 S.W.2d 227 (1998) (citing *Holloway v. Arkansas*, 435 U.S. 475 (1978)). Appointing or permitting a single attorney to represent codefendants, however, does create a possible conflict of interest that could prejudice either or both clients. *Myers*, 333 Ark. 706, 972 S.W.2d 227 (citing *Burger v. Kemp*, 483 U.S. 776 (1987)). Simply because there is a possibility of prejudice, there is no justification for an inflexible rule that would presume prejudice in all cases. *Myers*, 333 Ark. 706, 972 S.W.2d 227. Instead, prejudice is presumed only if the defendant demonstrates that counsel "actively represented conflicting interests" and "an actual conflict of interest adversely affected [her] lawyer's performance." *Id.* at 716, 972 S.W.2d at 232 (quoting *Sheridan v. State*, 331 Ark. 1, 4, 959 S.W.2d 29, 31 (1998)).

Here, given that Beasley pled guilty four months before Gonzales's trial, we agree with the circuit court that Gonzales has failed to establish that trial counsel actively represented conflicting interests. Further, Gonzales does not identify any lapse in performance by her trial counsel due to the alleged conflict of interest. Accordingly, we hold that the circuit court did not clearly err in finding that Gonzales was not entitled to relief under this claim.

For the foregoing reasons, we affirm the circuit court's denial of Gonzales's Rule 37 petition.

Affirmed.

GLADWIN and BROWN, JJ., agree.

Martha R. Gonzales, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Adam Jackson*, Ass't Att'y Gen., for appellee.