



In the Missouri Court of Appeals Eastern District

DIVISION ONE

HERBERT W. MORRISON,)	No. ED105000
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Ellen H. Ribaudó
STATE OF MISSOURI,)	
)	
Respondent.)	FILED: October 24, 2017

Introduction

Herbert W. Morrison (“Morrison”) appeals from the judgment of the motion court denying his Rule 24.035¹ motion for post-conviction relief without an evidentiary hearing. Morrison pled guilty to multiple charges and was sentenced to thirty years in prison. On appeal, Morrison contends that the motion court clearly erred in denying his Rule 24.035 motion without an evidentiary hearing because plea counsel was ineffective for pressuring him to plead guilty. Because Morrison testified that he was content with plea counsel at both the plea hearing and the sentencing hearing, the record refutes his claim that his guilty plea was involuntary. Accordingly, we affirm the judgment of the motion court.

¹ All Rule references are to Mo. R. Crim. P. (2015).

Factual and Procedural History

The State charged Morrison with nineteen separate counts including: three counts of possession of child pornography; two counts of first-degree child molestation; three counts of first-degree statutory sodomy; two counts of first-degree promoting child pornography; two counts of first-degree statutory rape; three counts of second-degree statutory rape; two counts of sexual exploitation of a minor; one count of second-degree statutory sodomy; and one count of second-degree child molestation. The charges against Morrison arose mostly from allegations by M.M., Morrison's adopted daughter. M.M.'s anticipated testimony would purportedly detail incidents where Morrison sexually abused M.M. and forced M.M. to perform sexual acts while M.M. was between the ages of five and eighteen. The State also intended to introduce photographs and sexually explicit images to support M.M.'s statements, including forty-four CDs, most of which contained child pornography. On the morning of Morrison's scheduled trial, Morrison entered a blind guilty plea on all nineteen charges.

At the plea hearing, the trial court questioned Morrison extensively regarding his knowledge of the plea and his counsel. Morrison testified that he had plenty of time to speak with plea counsel, was satisfied with plea counsel's services, and was not threatened or promised anything to plead guilty. The trial court also explained the charges against Morrison, the range of punishments, and Morrison's rights. Morrison subsequently plead guilty to all charges. The State described the factual basis for the offenses and Morrison agreed that the stated facts were substantially correct. The trial court accepted the plea and found that Morrison entered into the guilty plea freely, intelligently, and voluntarily.

At the subsequent sentencing hearing, the trial court asked Morrison more questions about his plea. The following exchange occurred:

- Q: Did you have enough time to talk to [plea counsel] before you entered your pleas at that time?
- A: I did.
- Q: Did he do everything you asked him to do?
- A: Yes.
- Q: Did he do anything you told him not to do?
- A: No.
- Q: This was a blind plea; in other words, when you entered your plea of guilty, you subjected yourself to the full range of punishment, is that correct?
- A: That's correct.
- Q: So there were no promises made as to the plea, is that correct?
- A: That's correct.
- Q: Are you satisfied with [plea counsel's] services in these cases?
- A: Yes.

Consequently, the trial court sentenced Morrison to concurrent terms totaling thirty years in prison. Morrison then filed an amended post-conviction relief motion, arguing that his plea was involuntary, due to the ineffective assistance of plea counsel. Morrison alleged that plea counsel failed to meet with him, despite his requests; appeared agitated when Morrison refused to accept an earlier plea offer; appeared unprepared for trial; and told Morrison he had no other option but to plead guilty based on the complaining witnesses' proposed testimony. Thus, Morrison felt that, due to plea counsel's statements and inactions, he was forced to plead guilty. The motion court denied Morrison's amended motion without an evidentiary hearing because Morrison's ineffective-assistance-of-counsel claim was refuted by the record. Morrison now appeals.

Point on Appeal

In his sole point on appeal, Morrison claims the motion court clearly erred in denying his Rule 24.035 post-conviction relief motion without an evidentiary hearing, because plea counsel's lack of preparation and his last-minute discussion of a blind guilty plea induced Morrison into an involuntary guilty plea.

Standard of Review

We review the denial of a Rule 24.035 motion for post-conviction relief only to determine whether the motion court's findings and conclusions are clearly erroneous. Rule 24.035(k); Dorsey v. State, 448 S.W.3d 276, 282 (Mo. 2014). Findings and conclusions are clearly erroneous only if, after reviewing the entire record, we are "left with the definite and firm impression that a mistake has been made." Swallow v. State, 398 S.W.3d 1, 3 (Mo. banc 2013) (citing Taylor v. State, 382 S.W.3d 78, 80 (Mo. banc 2012)). The motion court's judgment must be upheld if it is sustainable on any ground. Id.

Discussion

Morrison argues that plea counsel's lack of preparation for trial and plea counsel's last-minute discussion of a guilty plea induced Morrison into a feeling of helplessness and loss of confidence in plea counsel, which forced Morrison to enter into a guilty plea. The trial court denied Morrison's amended motion, arguing the same claims, without an evidentiary hearing because his ineffective-assistance-of-counsel claim was refuted by the record. See Rule 24.035(h); Whitehead v. State, 481 S.W.3d 116, 122 (Mo. App. E.D. 2016) (an evidentiary hearing is not warranted for every Rule 24.035 motion). Because we find that the motion court did not clearly err in determining that Morrison's claim of ineffective assistance of counsel was refuted by the record, we affirm the judgment of the motion court.

Morrison must prove both that plea counsel was deficient and that he was prejudiced as a result for relief on his ineffective-assistance-of-counsel claim. Strickland v. Washington, 466 U.S. 668, 687 (1984); Johnson v. State, 406 S.W.3d 892, 898–99 (Mo. banc 2013). Morrison must point to "specific acts or omissions of counsel that, in light of all the circumstances, fell outside the wide range of professional competent assistance" to overcome the strong presumption that plea counsel was reasonable and effective. Zink v. State, 278 S.W.3d 170, 176

(Mo. banc 2009). Further, “counsel’s ineffectiveness is only relevant to the extent it affects the voluntariness of movant’s plea.” Murphy v. State, 510 S.W.3d 876, 879–80 (Mo. App. E.D. 2017). Additionally, “[t]o show prejudice . . . [Morrison] must show that but for [plea] counsel’s alleged unreasonable conduct, there is a reasonable probability he would not have pled guilty but would have insisted on going to trial.” Id. at 880.

Here, Morrison alleges that plea counsel pressured Morrison to plead guilty instead of going to trial and told Morrison he would lose at trial based on the complaining witnesses’ proposed testimony. However, “[t]he fact that plea counsel gave [Morrison] an honest opinion of the strength of his case simply does not constitute coercion. It is precisely ‘the duty of counsel to advise his client of the strength of the State’s case.’” Whitehead, 481 S.W.3d at 126 (quoting Pittman v. State, 331 S.W.3d 361, 365 (Mo. App. W.D. 2011)). The State allegedly had evidence of the charges against Morrison from M.M.’s statements and images. Morrison’s plea counsel merely explained the strength of the complaining witnesses’ proposed testimony on the State’s case against Morrison. See Pittman, 331 S.W.3d at 365 (“The fact that such advice was that the State’s case was strong, or that [the defendant’s] conviction was likely, does not vitiate the plea of guilty.”). Thus, the motion court did not clearly err by finding plea counsel was not ineffective for advising Morrison to plead guilty instead of going to trial, even if the advice was given the morning Morrison’s trial was scheduled.

Morrison also contends that the trial court’s questions regarding the effectiveness of plea counsel were too broad to conclusively refute Morrison’s allegations. Further, Morrison argues that whether Morrison had the “opportunity” to voice complaints about his plea counsel should not contradict or conclusively refute his claim. We disagree. In State v. Driver, 912 S.W.2d 52, 55–56 (Mo. banc 1995), the Supreme Court of Missouri held that the questions asked of movant

during his plea hearing were too broad to conclusively refute ineffective-assistance-of-counsel claims. However, where the movant enters a guilty plea, the court may give “numerous opportunities to express dissatisfaction with the performance of counsel” without meeting the Driver requirements regarding the specificity of questions. May v. State, 921 S.W.2d 85, 88 (Mo. App. W.D. 1996). Because Morrison plead guilty, Driver is not persuasive. See generally Morrison v. State, 65 S.W.3d 561 (Mo. App. W.D. 2002) (affirming the denial of movant’s Rule 24.035 motion without an evidentiary hearing because movant had ample opportunities to raise any questions about his counsel’s performance yet repeatedly expressed satisfaction with counsel when directly questioned at the plea hearing).

[A] motion court properly denies an evidentiary hearing on a motion for post-conviction relief where the movant repeatedly assured the plea court that he was satisfied with counsel’s representation and that counsel did everything he requested and the movant was given “ample opportunity to express his duress” to the court.

Ballard v. State, 500 S.W.3d 294, 302 (Mo. App. E.D. 2016) (quoting Conger v. State, 356 S.W.3d 217, 222 (Mo. App. E.D. 2011) (internal citations omitted)).

Here, the trial court questioned Morrison about the effectiveness of his counsel both during the plea hearing and the sentencing hearing. When the trial court asked Morrison whether he was satisfied with his counsel’s services, Morrison answered affirmatively. In addition, Morrison testified that no one threatened or promised him anything to plead guilty. See Nesbitt v. State, 335 S.W.3d 67, 70 (Mo. App. E.D. 2011) (“A trial judge is not required to read off a lengthy list of synonyms in order to assure the defendant understands to advise the court of any attempt by anyone that causes the defendant to enter a guilty plea against his or her will.”). Further, at the sentencing hearing, the trial court asked if Morrison had enough time to talk to his attorney, if his attorney did everything Morrison asked and nothing Morrison told him not to do, if there were any promises made as to the plea, and whether Morrison was satisfied with his

attorney's services. Again, Morrison confirmed that he was satisfied with his counsel's services and had no complaints.

Since "[a] defendant who repeatedly assures the court that he is satisfied with his counsel's performance and that his counsel had done everything that he requested, is later barred from obtaining post-conviction relief based on ineffective assistance of counsel," Morrison is barred from obtaining post-conviction relief in this appeal. Estes v. State, 950 S.W.2d 539, 542 (Mo. App. E.D. 1997) (quoting Hamilton v. State, 865 S.W.2d 374, 375 (Mo. App. E.D. 1993)). Because the record refutes Morrison's argument that plea counsel was ineffective for failing to prepare for trial and pressuring Morrison into pleading guilty, the motion court did not clearly err in denying Morrison's Rule 24.035 motion without an evidentiary hearing. Point denied.

Conclusion

The judgment of the motion court is affirmed.


KURT S. ODENWALD, Judge

Robert G. Dowd, Jr., P.J., concurs.
Sherri B. Sullivan, J., concurs.