

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 8, 2016

JAMES RAY JONES, JR. v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2012-C-2624 Mark J. Fishburn, Judge

No. M2016-00922-CCA-R3-PC

The Petitioner, James Ray Jones, Jr., pleaded guilty to possession of over seventy pounds of marijuana in a drug-free school zone and received a sentence of twenty-five years in the Department of Correction. The Petitioner filed a post-conviction petition, and the post-conviction court denied relief following a hearing. On appeal, the Petitioner maintains that his guilty plea was not voluntary because the State coerced the Petitioner into accepting the offer by threatening to prosecute his brother. After review, we affirm the post-conviction court's judgment.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the Court, in which THOMAS T. WOODALL, P.J., and ALAN E. GLENN, J., joined.

Ryan C. Caldwell, Nashville, Tennessee, for the appellant, James Ray Jones, Jr.

Herbert H. Slatery III, Attorney General and Reporter; Katherine C. Redding, Assistant Attorney General; Glenn Funk, District Attorney General; and Brian Ewald, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

A Davidson County grand jury indicted the Petitioner for conspiracy to possess with intent to sell or deliver over seventy pounds of marijuana in a drug-free school zone and possession with intent to deliver over seventy pounds of marijuana in a drug-free school zone. The Petitioner's brother was also indicted for these offenses.

At the guilty plea submission hearing, the State provided the following factual basis in support of the Petitioner's guilty plea:

[O]n 8/23/2012, at 8:15 a.m., law enforcement officers pulled over two vehicles carrying two subjects, [the Petitioner] driving one vehicle with co-conspirator Ron Hall. [The Petitioner's brother] was driving another vehicle, in that vehicle was found 117 pounds of marijuana. Prior investigation shows all three individuals went to Bessemer, Alabama to pick up a hundred pounds of marijuana based on federal wire taps and surveillance, both [of] these individuals were acting in concert together.

The Petitioner testified that these facts were "true and correct." During the plea colloquy the Petitioner confirmed that he was literate, not taking any medication or drug that might impair his ability to understand his decision, and not suffering from a mental illness. He confirmed that there was no reason that he could not "fully understand and appreciate" the decision to enter a guilty plea and its consequences.

The Petitioner confirmed that his attorney ("Counsel") had reviewed the plea petition and answered all of his questions. The trial court then thoroughly reviewed with the Petitioner the charges, potential sentence, and consequences of a guilty plea. The Petitioner expressed his understanding of all of the information reviewed. The Petitioner acknowledged that the agreed upon twenty-five year sentence was the minimum sentence if convicted at trial with a maximum sentence of forty years. The Petitioner testified that he wanted to plead guilty for the agreed upon sentence of twenty-five years to be served at 35% to avoid the possibility of being convicted at trial and having to serve his sentence at 100%. The trial court thoroughly reviewed each of the rights that the Petitioner waived by pleading guilty, and the Petitioner confirmed that he understood each of the rights and the consequences of his waiver of those rights.

The trial court asked the Petitioner if anyone had "threatened [him] with anything or promised [him] anything in order to get you to enter these pleas?" The Petitioner responded, "No, sir." The Petitioner testified that he was entering the guilty plea because he was guilty. Counsel affirmed that he believed that the Petitioner was entering the guilty plea "freely and knowingly and voluntarily." The trial court then stated, "Based upon your pleas of guilty, [I] find you guilty, I find there's a factual basis to support the pleas, that you're competent to enter said pleas and that you're doing so freely, knowingly and voluntarily."

Thereafter, the Petitioner filed a post-conviction petition¹ alleging that his guilty plea was the product of coercion and therefore involuntary. At the post-conviction hearing, the Petitioner testified that he had retained Counsel's representation. He stated that he had never intended on pleading guilty but, when he told the prosecutor of his intention to proceed to trial, the prosecutor stated, "Yea, you go to trial, you'll beat me on everything but facilitation, when you do, I'm gonna give your brother² 15 years at a hundred percent because he had the drugs in his truck." He further asserted that the prosecutor also kept "trying to take [his] bond." The Petitioner confirmed that Counsel was present during all of the discussions with the prosecutor. He described the prosecutor as "pretty much" "talk[ing] crazy to me out there in the hallway." The Petitioner stated that, had the prosecutor not threatened him with prosecuting the Petitioner's brother, the Petitioner would not have entered a guilty plea.

The Petitioner testified that he did not disclose the coercion to the trial court during the plea colloquy because he was afraid the prosecutor would "snatch" his brother's "deal away." He said that, even though he did not state it aloud to the trial judge, "everybody in the courtroom pretty much knew, because [the prosecutor], he's flamboyant." The Petitioner said that he believed the twenty-five year sentence was excessive, but he accepted the deal because the prosecutor threatened him, his mother was crying and his brother was crying. The Petitioner agreed that he had two prior felony convictions but noted that he had not been arrested since 1997. The Petitioner confirmed that, had he gone to trial, he would have had to serve his sentence at 100%.

On cross-examination, the Petitioner confirmed that he had four prior felony convictions rather than the two to which he had earlier testified. He explained that he "misunderstood" when the trial court asked him, "Does that mean you have two prior felony convictions?" The Petitioner stated that he had pled guilty twice before and agreed that "without a doubt" he understood the plea agreement at issue in this appeal and the consequences of his entering a guilty plea. He further agreed that the evidence against his brother was "overwhelming." The Petitioner agreed that the prosecutor offered both the Petitioner and his brother lesser sentences than what they would have received had they been convicted at trial.

Mark Kovach, the attorney who represented the Petitioner's brother, testified that his client was experiencing "money trouble" and the Petitioner got him involved because he had a "clean record." He stated that the Petitioner's brother "had a clean record, maybe you know had a clean driving record and he could do things that, because of [the

¹ The Petitioner also alleged ineffective assistance of counsel; however, he does not maintain this issue on appeal so we focus solely on the issue of the voluntariness of his plea.

² At the time of the post-conviction hearing, the Petitioner's brother was deceased.

Petitioner's] past, that [the Petitioner] couldn't do, and it blew up." Mr. Kovach stated that he was present during plea negotiations and that the prosecutor always limited the time period when the offer was available. He believed that a sentence to serve for the Petitioner's brother was "hard" given he had no criminal history but that the prosecutor "wanted to send these boys to jail for some reason." He agreed that there was a large amount of marijuana involved in this case.

Upon questioning by the post-conviction court, Mr. Kovach stated that he did not feel intimidated by the prosecutor nor did he believe Counsel felt so. He explained that there was a lot of "pressure" because the defendants were brothers and facing jail time.

Kimberly Jones, the Petitioner's wife, testified that she "begged" her husband to accept the State's offer because the Petitioner's brother potentially faced serving a sentence at 100%. She said that her husband agreed, stating "Okay, let's do what we got to do to get [my brother] out of trouble, try to get [my brother] less time." She confirmed that the Petitioner did not want to sign the plea agreement, but she asked everyone to leave the room and she "cried to him to sign the papers."

The post-conviction court issued its denial of the petition in a subsequent order with the following findings:

Petitioner claims that his plea was not voluntary because he only pled to protect his brother from the lengthier sentence the district attorney kept "threatening" to give him. The district attorney had no power to "give" [the Petitioner's brother] any sentence; he could only offer plea agreements or a trial. Any sentencing after trial would be set by the judge following the statutory guidelines.

....

Petitioner agreed in open court that he discussed the facts and circumstances of his case with [Counsel], that [Counsel] had explained the law and evidence of his case as well as possible defense strategies, and that Petitioner understood he was pleading out of range pursuant to *Hicks v. State*. Further, Petitioner understood that if he went to trial and was convicted of the offense with which he was charged he was facing 25 to 40 years without parole.

Petitioner got the benefit of the deal for which he bargained: both he and his brother got a less severe sentence than they were risking by going to trial.

It is from this judgment that the Petitioner appeals.

II. Analysis

On appeal, the Petitioner maintains that the post-conviction court erred when it denied relief because his guilty plea was coerced and therefore not voluntary. The Petitioner contends that the plea was the result of the State's threat to retaliate against the Petitioner if he did not enter a guilty plea by ensuring his brother received a sentence requiring service of 100% of the sentence. The State responds that the Petitioner has failed to demonstrate that his plea was not entered voluntarily or intelligently. We agree with the State.

In order to obtain post-conviction relief, a petitioner must show that his or her conviction or sentence is void or voidable because of the abridgment of a constitutional right. T.C.A. § 40-30-103 (2012). The petitioner bears the burden of proving factual allegations in the petition for post-conviction relief by clear and convincing evidence. T.C.A. § 40-30-110(f) (2012). Upon review, this Court will not re-weigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved by the trial judge, not the appellate courts. *Momon v. State*, 18 S.W.3d 152, 156 (Tenn. 1999) (citing *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997)). A post-conviction court's factual findings are subject to a *de novo* review by this Court; however, we must accord these factual findings a presumption of correctness, which can be overcome only when a preponderance of the evidence is contrary to the post-conviction court's factual findings. *Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). A post-conviction court's conclusions of law are subject to a purely *de novo* review by this Court, with no presumption of correctness. *Id.* at 457.

To be valid, a guilty plea must be entered knowingly, voluntarily, and intelligently. *See Boykin v. Alabama*, 395 U.S. 238, 242-44 (1969); *State v. Mackey*, 553 S.W.2d 337, 340 (Tenn. 1977). A plea meets constitutional muster when the defendant understands both what the plea connotes and its consequences, *Blankenship v. State*, 858 S.W.2d 897, 904 (Tenn. 1993) (citing *Boykin*, 395 U.S. at 244), and makes a voluntary and intelligent choice from the alternative courses of action available to plead guilty. *Jaco v. State*, 120 S.W.3d 828, 831 (Tenn. 2003) (citing *North Carolina v. Alford*, 400 U.S. 25 (1970)). A petitioner's testimony at a guilty plea hearing "constitute[s] a formidable barrier" in any subsequent collateral proceeding because "[s]olemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74 (1977).

When determining the knowing and voluntary nature of a guilty plea, the standard is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31

(1970). A reviewing court can look to a number of factors to find a “knowing and intelligent plea,” including “[t]he relative intelligence of the petitioner, the degree of his [or her] familiarity with criminal proceedings, the opportunity to confer with competent counsel and the trial court regarding the charges faced, and the desire to avoid a greater punishment resulting from a jury trial.” *Blankenship*, 858 S.W.2d at 904. The Petitioner must have an understanding of the charges against him and the consequences of pleading guilty, including “the sentence that he will be forced to serve as the result of his guilty plea and conviction.” *Id.* at 905. A plea is not “voluntary” if it results from ignorance, misunderstanding, coercion, inducements, or threats. *Id.* at 904.

The evidence does not preponderate against the post-conviction court’s findings. The trial court engaged in a thorough plea colloquy with the Petitioner about the contents of the plea agreement and consequences of the guilty plea. The Petitioner retained an attorney who was present during all negotiations and at the plea submission hearing. At the plea submission hearing, under oath, the Petitioner denied that any threats or additional promises had been made to induce the plea. He also told the trial court that he was choosing to enter a guilty plea to avoid service of his sentence at 100% if he should be convicted at trial.

At the post-conviction hearing, the Petitioner testified that “without a doubt” he understood the plea agreement and the consequences of entering the plea. The Petitioner also testified that he entered the guilty plea to protect his brother and that he was faced with his crying mother and crying brother. The Petitioner’s wife testified that she “begged” the Petitioner to accept the plea and that he then agreed.

The Petitioner’s decision to plead guilty for reasons related to his family does not invalidate his plea. Plea offers by the state may legitimately require that all codefendants agree before the offer is extended to any defendant, and such a contingency does not equate with a coerced guilty plea. *See, e.g., Parham v. State*, 885 S.W.2d 375 (Tenn. Crim. App. 1994). There is no constitutional right to plea bargain, and there is no duty upon the State to enter into plea negotiations. *See Mabry v. Johnson*, 467 U.S. 504, 507 (1984). We also note that the record reflects that the Petitioner was motivated to plead guilty in order to remove his exposure to a sentence without parole. The Petitioner and his brother, represented by attorneys, negotiated and received sentences less severe than the potential sentences they might have received had they been convicted at trial.

Accordingly, the Petitioner has failed to prove by clear and convincing evidence that his guilty plea was not voluntary. The Petitioner is not entitled to relief.

III. Conclusion

After a thorough review of the record and relevant authorities, we conclude that the post-conviction court properly denied post-conviction relief. Accordingly, we affirm the judgment of the post-conviction court.

ROBERT W. WEDEMEYER, JUDGE