

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs April 12, 2016

**MARTRELL HOLLOWAY v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**Nos. 1205320, 1205321, 1205322 J. Robert Carter, Jr., Judge**

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**No. W2015-01402-CCA-R3-PC – Filed December 9, 2016**

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Petitioner, Martrell Holloway, appeals the post-conviction court's denial of post-conviction relief following an evidentiary hearing. The petition challenged Petitioner's convictions for two counts of especially aggravated kidnapping, three counts of aggravated robbery, and one count of especially aggravated robbery. The convictions resulted from guilty pleas pursuant to a negotiated plea agreement with the Shelby County District Attorney's Office which was approved by the trial court for a total sentence of 18 years. After review of the record and the parties' briefs, we affirm the judgment of the post-conviction court.

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

THOMAS T. WOODALL, P.J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT H. MONTGOMERY, JR., JJ., joined.

Warren P. Campbell, Memphis, Tennessee, for the appellant, Martrell Holloway.

Herbert H. Slatery III, Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Eric Christensen, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

***Background***

The transcript of the guilty plea hearing shows the following: In one case Petitioner and at least three other persons confronted a victim, "Mr. Braal," outside the victim's home, where the victim was brutally struck in the face with a handgun. Mr. Braal had to have five metal plates inserted into his face. His cell phone and wallet were

taken from him, and Mr. Braal was forced into the back of his garage against his will. Inside the residence, the perpetrators, including Petitioner, took a television, a laptop, and other valuables before proceeding upstairs and finding the second victim, Mr. Frederick Krafcik. The perpetrators “pulled” the handgun on Mr. Krafcik and took his wallet and computer.

In a separate unrelated offense, Petitioner and the other men, while brandishing a handgun, accosted Mr. Ping Chin at Mud Island Park and took the victim’s cell phone. In the last offense, Petitioner and two other men approached Mr. Fabio Savoring, who was at his mailbox, and while brandishing a handgun took the victim’s cell phone and wallet.

Neither the indictments nor the judgments are included in the appellate record. However, the indictments are included in the appellate record of a prior appeal in this case, *Martrell Holloway v. State*, No. W2014-00836-CCA-R3-PC, 2015 WL 129090(Tenn. Crim. App. Jan. 9, 2015). One count of especially aggravated kidnapping named Mr. Krafcik as the victim. The prosecutor’s recitation of facts at the guilty plea hearing to show a factual basis for the guilty pleas did not include anything pertaining to this count. However, that is not an issue raised in this appeal nor was it presented in the post-conviction court’s proceedings.

### ***Post-Conviction Proceedings***

Petitioner’s issues raised on appeal are taken directly from his brief:

- I. Whether [Petitioner’s] guilty plea was voluntary and knowing considering his mental state at the time of his guilty plea.
- II. Whether trial counsel’s actions intimidated, coerced, or otherwise were the cause of [Petitioner’s] defective involuntary guilty plea.
- III. Was trial counsel ineffective for failing to advise the court of [Petitioner’s] mental state at the time of his guilty plea?

As to issue I, Petitioner argues in his brief that his guilty pleas were not voluntarily and knowingly entered because at the time of the pleas he was under the influence of medications he was taking. As to issue II, Petitioner asserts on appeal that trial counsel “was unreasonably overbearing and coercive” to Petitioner such that Petitioner “was overcome by trial counsel and coerced into” entering the guilty pleas. Regarding issue III, Petitioner argues that trial counsel rendered ineffective assistance of counsel by failing to “inquire into [Petitioner’s] mental state at the time of his guilty plea[s] and did not inform the [trial court] that a mental evaluation was needed.”

Our summary of the proof presented at the post-conviction hearing will be limited to evidence pertaining to the issues raised by Petitioner on appeal.

The transcript of the hearing on Petitioner's guilty pleas was admitted as an exhibit at the post-conviction hearing. During the trial court's questioning of Petitioner under oath, Petitioner responded "Yes, sir" when asked if he was entering his guilty pleas freely and voluntarily and responded "No, sir" when asked if he had any questions about what he (Petitioner) was doing in the guilty plea process. Petitioner also acknowledged that he had discussed everything he knew about the cases with trial counsel, that he understood the negotiated sentence and his total possible sentence if he went to trial and was convicted, and that he understood the rights he was waiving by entering guilty pleas. After the conclusion of the examination of Petitioner under oath, the trial court stated, "The Court finds that the pleas are freely and voluntarily entered. The waiver is knowingly, intelligently made, free from threats or coercion."

At the post-conviction hearing Petitioner testified that he admitted at the guilty plea hearing that the pleas were knowing and voluntary only because "my attorney told me to come out here and say whatever the judge said." Petitioner added that he was on medication at the time and "didn't know what [he] was doing." Petitioner testified that he took the medication on the morning before coming into court, and during the proceedings he "was drowsy, light headed and didn't know what was going on." Petitioner stated that he informed trial counsel that he was drowsy and did not know what was occurring. Petitioner identified a document which showed the medication he took on the day of the guilty pleas. This document was admitted as an exhibit. Contrary to Petitioner's testimony that he took the medication the morning of his guilty pleas, the exhibit showed that the medication was given at night at bedtime.

Petitioner identified a copy of a letter he sent to trial counsel nine days after the guilty pleas were entered. It was made an exhibit at the post-conviction hearing. The letter informed trial counsel that Petitioner wanted to withdraw his guilty pleas. Petitioner stated that trial counsel had "tricked" him into entering guilty pleas and accused trial counsel of telling Petitioner "to say yes to all the judge[']s questions."

Petitioner testified that trial counsel "tricked" him by showing a picture of a man on a gurney, saying the man was deceased, and telling Petitioner that he would get a life sentence if he did not plead guilty that day. During cross-examination, Petitioner responded to all questions concerning the testimony given by him at the guilty plea hearing by asserting that trial counsel told him to say "yes" to everything the judge asked him about.

Sandra Holloway, Petitioner's mother, testified that regarding Petitioner's mental health at the time of the guilty pleas, he had "real bad headaches." She added that Petitioner told her that he was high "on pills" at the time he entered the guilty pleas.

Reginald Turner, Petitioner's uncle, testified that after the guilty pleas had been entered, Petitioner told him that trial counsel "pressured" Petitioner and that Petitioner did not understand what he (Petitioner) had done. Petitioner also told Mr. Turner that Petitioner had not wanted to plead guilty. Mr. Turner testified that Petitioner was dyslexic. However, Mr. Turner could not recall Petitioner mentioning anything about his mental condition on the day he pled guilty.

Petitioner concluded his presentation of proof after Mr. Turner testified. The State called trial counsel as a witness.

Trial counsel testified that he received extensive discovery information from the State and that he had provided a copy of the discovery to Petitioner. Trial counsel stated that he and Petitioner discussed potential defenses, trial strategy in the event the case went to trial, and about how to receive better offers for a negotiated plea agreement. After going through the final plea offer and discussing in detail Petitioner's possible exposure of a sentence of more than 100 years considering the strength of the State's case, Petitioner decided to enter the guilty pleas.

Trial counsel testified that Petitioner was told that it was solely Petitioner's choice as to whether to plead guilty or to go to trial. Trial counsel denied that he told Petitioner to say "yes" to all the judge's questions, and he denied that he had "tricked" Petitioner into pleading guilty. Trial counsel could not recall Petitioner mentioning pre-trial that he was taking medications at the jail, but Petitioner "may have" done so. Trial counsel did not recall Petitioner being "fuzzy-headed" while entering the guilty pleas. However, trial counsel stated that there was no indication that Petitioner was struggling to answer the questions asked during the guilty plea hearing. Trial counsel testified that it was communicated to Petitioner that his effective sentence following the guilty pleas was "18 years at 100 percent."

The post-conviction court took the matter under advisement following the hearing and subsequently filed an order denying post-conviction relief. In its order, the post-conviction court thoroughly summarized the testimony of each witness but failed to specifically state what, or whose, testimony was credible. Obviously, a summary of all the testimony is not by itself a finding of what the facts are in the case.

We will directly quote the only portions of the six-page order that can be reasonably construed as a finding by the post-conviction court as to what the facts are in this post-conviction case. The post-conviction court stated in the order:

Petitioner's assertion that his guilty plea was entered into as a result of trickery likewise lacks proof. During the guilty plea colloquy Petitioner was advised of his rights to a jury trial ([transcript] page 10). The details of the plea were discussed, ([transcript] pages 12-13) including ranges of punishment and possibly exposure.

. . . The Petitioner clearly demonstrated that he knowingly and intelligently waived his rights to a jury trial in these matters.

Petitioner has failed to demonstrate that his attorney's performance was in any way deficient. [citation omitted] In summary, the Petitioner is now suffering from "buyers remorse."

### ***Analysis***

In a post-conviction proceeding, the burden is on the Petitioner to prove his facts for relief by clear and convincing evidence. T.C.A. § 40-30-110(f); *see Dellinger v. State*, 279 S.W.3d 282, 293-94 (Tenn. 2009). On appeal, we are bound by the trial court's findings of fact unless we conclude that the evidence in the record preponderates against those findings. *Fields v. State*, 40 S.W.3d 450, 456 (Tenn. 2001). Additionally, "questions concerning the credibility of the witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved" by the post-conviction court. *Id.* Because they relate to mixed questions of law and fact, we review the trial court's conclusions as to whether counsel's performance was deficient and whether that deficiency was prejudicial under a de novo standard with no presumption of correctness. *Id.* at 457.

In order to prevail on an ineffective assistance of counsel claim, the petitioner must establish that (1) his lawyer's performance was deficient and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 205, 280 L. Ed. 2d 674 (1984); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). "[A] failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim. Indeed, a court need not address the components in any particular order or even address both if the [petitioner] makes an insufficient showing of one component." *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996) (citing *Strickland*, 466 U.S. at 697).

A petitioner successfully demonstrates deficient performance when the clear and convincing evidence proves that his attorney's conduct fell below "an objective standard of reasonableness under prevailing professional norms." *Id.* at 369 (citing *Strickland*, 466 U.S. at 688; *Baxter*, 523 S.W.2d at 936). Prejudice arising therefrom is demonstrated once the petitioner establishes "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 370 (quoting *Strickland*, 466 U.S. at 694). In reviewing counsel's performance, the distortions of hindsight must be avoided, and this Court will not second-guess counsel's decisions regarding trial strategies and tactics. *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn.1982). The reviewing court, therefore, should not conclude that a particular act or omission by counsel is unreasonable merely because the strategy was unsuccessful. *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065. Rather, counsel's alleged errors should be judged from counsel's perspective at the point of time they were made in light of all the facts and circumstances at that time. *Id.* at 690, 104 S.Ct. at 2066.

We are constrained to conclude that the post-conviction court barely made enough findings of fact to permit this court to decide the issues presented. We take this opportunity to point out that wide deference is afforded to a post-conviction court's findings of fact and credibility determinations. Neither simply denying relief, nor granting relief, makes a credibility determination or a finding of facts. The findings of fact are the opportunity for the post-conviction court to state what happened. It is *not* merely a statement of the testimony presented, which by the nature of evidentiary hearings has conflicting versions of what happened.

Petitioner's first issue is that his guilty pleas were not knowingly and voluntarily entered. We conclude from the post-conviction court's order, as quoted above, that it accredited the sworn testimony of Petitioner at the guilty plea submission hearing, (over which the post-conviction judge also presided) and did not find credible Petitioner's conflicting testimony at the post-conviction hearing.

As to Petitioner's second issue, we first note that the post-conviction court made a determination that Petitioner's guilty pleas were knowingly and voluntarily entered. Thus, Petitioner's assertion in his second issue that the guilty pleas were "defective involuntary" pleas fails. The post-conviction court stated in its order that Petitioner's "assertion that his guilty plea[s] [were] entered into as a result of trickery *likewise lacks proof*," but in fact there was substantial testimony by Petitioner, which if believed, would establish that trial counsel "tricked" Petitioner into pleading guilty. However, even without directly stating that Petitioner's post-conviction hearing testimony was not credible, we conclude that the post-conviction court's apparent credibility finding of Petitioner's testimony at the guilty plea submission hearing results in Petitioner not being entitled to relief under his second issue.

Petitioner's last issue is an extremely close issue to decide due to the fact that the post-conviction court did not mention in any way in its findings Petitioner's proof that he was under the influence of his medications which prevented him from understanding what he was doing during the guilty pleas. Again, the post-conviction court merely recited what Petitioner testified to at the post-conviction hearing, with no explicit determination that Petitioner's testimony was not credible. At the guilty plea submission hearing, the trial court did not ask Petitioner if he was under the influence of any drugs or medicine. However, Petitioner's third issue, as phrased by him in his brief, has two components: (1) did trial counsel render ineffective assistance of counsel by failing to advise the trial court, and (2) of Petitioner's (presumably alleged defective) mental state at the time of the pleas? We have already determined that the trial court made an implicit credibility determination that where applicable, Petitioner's testimony at the guilty plea submission hearing was more credible than Petitioner's conflicting testimony at the post-conviction hearing, and that with this "back door" fact finding, Petitioner's guilty pleas were knowingly and voluntarily entered. By necessity, this means that his mental state was not impaired, which thus requires the conclusion that trial counsel could not render ineffective assistance by not advising the trial court of a condition that did not exist.

Even though the post-conviction court made only a modicum of factual findings in order to justify its ruling, the findings of fact were the absolute minimum amount necessary to avoid a remand for explicit findings of fact. In consideration of the findings of fact, we conclude that the evidence does not preponderate against the post-conviction court's determinations and its ruling.

Accordingly, the judgment of the post-conviction court is affirmed.

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THOMAS T. WOODALL, PRESIDING JUDGE