

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 14, 2007

MARCUS ODOM v. STATE OF TENNESSEE

Appeal from the Circuit Court for Cannon County
Nos. PC06-15, F04-01A, F05-17 Don Ash, Judge

No. M2007-00092-CCA-R3-PC - Filed March 3, 2008

The Petitioner, Marcus Odom, appeals from the Cannon County Circuit Court's order dismissing his petition for post-conviction relief. He argues that the dismissal was erroneous because he did not receive the effective assistance of counsel prior to and at the time of the entry of his guilty pleas. Following our review, we conclude that the Petitioner has not demonstrated that his trial counsel was constitutionally ineffective. Consequently, we affirm the post-conviction court's order of dismissal.

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

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and JOHN EVERETT WILLIAMS, JJ., joined.

Adam T. Dodd, Murfreesboro, Tennessee, for the appellant, Marcus Odom.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; William Whitesell, District Attorney General; and David L. Puckett, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On February 23, 2005, the Petitioner entered guilty pleas to three counts of first degree murder, one count of especially aggravated robbery, and one count of especially aggravated kidnapping. He was sentenced to life without the possibility of parole for each of the murder convictions and to twenty years for each of the two remaining convictions. All sentences were ordered to be served concurrently.

A. Guilty Plea Submission Hearing

At his guilty plea submission hearing, the State set out the factual circumstances which underlay the role he played in the death of Jeffery Bell:

If it please the [c]ourt, these events occurred on February 21st, 2002, when [Jeffery Bell] went to the residence of Roger Todd at 723 Petty Gap Road here in Cannon County Tennessee. [Roger] Todd lured him over there to purchase some drugs, sell him some drugs. When he arrived, [the Petitioner] and [Jerry] Stone were already there, for they had planned, the three of them, to get [Jeffery Bell] over there. And after they got him to obtain some money, they were planning to kill [Jeffery Bell].

When [Jeffery Bell] arrived there, [Jerry] Stone and [the Petitioner] came around from the back, took him at gunpoint, took him into the garage. Using duct tape they taped him to a chair. While there they had him call in an attempt to get money. [Jeffery Bell] did contact Ronnie Foster. Mr. Foster agreed to take some money to [Jeffery Bell's mother's] mailbox.

During the course of this evening while [Jeffery Bell] was in the garage, [Jerry] Stone left to try to pick up the money. [Roger] Todd had left. [The Petitioner] at one point pulled a gun and tried to pull the trigger to kill [Jeffery Bell]. The gun did not fire. A fight ensued where [Jeffery Bell] had a knife and cut [the Petitioner]. At some point in the time after [the Petitioner] got [Jeffery Bell] subdued, [Roger] Todd came in by breaking the glass of the door into the garage and shot [Jeffery Bell] one time in the head. [The Petitioner] left and went outside of the garage, and [the Petitioner] heard other shots fired.

When [the Petitioner] became a suspect in this case, he gave a statement to Agent Wilkerson with the Tennessee Bureau of Investigation where he stated that they planned this robbery, this kidnapping, and had planned that once it was over with, in an attempt to get money, that [Jeffery Bell] would have to die. They had planned this among the three of them.

The parties stipulated that the aggravating factors enumerated in Tennessee Code Annotated sections 39-13-204(i)(5), (6), (7), and (13) were applicable to the Petitioner's murder of Jeffery Bell. In exchange for [the Petitioner's] guilty pleas regarding the February 21, 2002 incident described above, the State dismissed two additional charges that had resulted from the events of that day: felony murder and reckless burning (Jeffery Bell's body was later set on fire). Also in exchange for his guilty pleas, the State dismissed charges against the Petitioner for felony possession of over 26 grams of cocaine, felony possession of marijuana, and possession of drug paraphernalia that were pending against him in Rutherford County.

The State also described the Petitioner's involvement in the murder of Patrick McKean: If it please the court, [the events related to the murder of Patrick McKean] occurred in October of 2001, where Mr. McKean, who had received an award for worker's compensation, went to a bank here in Cannon County, [and] withdrew approximately \$6,500 out of his account.

[The Petitioner] and Jerry Stone had already dug a grave behind Roger Todd's residence at 723 Petty Gap Road. They got Mr. McKean behind [Roger Todd's]

residence under [the] pretense that they were going to sell him some property. At that time he was shot. After he died, he was pushed into the hole, and he was buried.

When [the Petitioner] was interviewed by Agent Wilkerson, he stated that Jerry Stone had shot him, [meaning] Patrick McKean. When Jerry Stone was interviewed, he stated that [the Petitioner] had shot Patrick McKean. Both of them gave statements that they had planned this, that they dug the hole and were planning to rob him and kill him. The body was eventually recovered on February 24, 2003, behind [Roger] Todd's residence.

Again, the parties stipulated that the aggravating factor enumerated in Tennessee Code Annotated section 39-13-204(i)(7), regarding the fact that the murder took place during the course of a robbery, applied to the Petitioner's murder of Patrick McKean.

Lastly, the State explained that the Petitioner's part in the murder of Jimmy Gerald Brandon was as follows:

These events occurred in 1998. Again, Jerry Stone and [the Petitioner] had dug a grave behind the residence of Roger Todd at 723 Petty Gap Road. Jimmy [Gerald] Brandon, [the Petitioner] Jerry Stone, and Glenn Odom were present at Roger Todd's residence. [The Petitioner,] and Jerry Stone got Jimmy [Gerald] Brandon to go down the hill behind [Roger] Todd's residence to look for marijuana that they thought Roger Todd was growing; at least they represented Roger Todd was growing marijuana there. When they got him down the hill, he was shot several times. [The Petitioner] and Jerry Stone then put him in the grave and covered him up. Glenn Odom, who was present, saw all three of them go down the hill, heard shots, and saw that [Jimmy Gerald] Brandon did not come back.

When [the Petitioner] was interviewed, he admitted that they had dug the hole, had planned to kill him, and that Jerry Stone did shoot and kill Jimmy Gerald Brandon. And, Judge, again, the aggravating factor to this would also be robbery.

Later in the hearing, the Petitioner agreed to the facts of the three murders as described by the State and affirmed that these facts were "without contest." Per its agreement with the Petitioner, the State recommended the sentences he would ultimately receive.

The trial court then questioned the Petitioner about the lawyers that represented him prior to his decision to enter guilty pleas. The Petitioner informed that his multiple court-appointed attorneys had represented him for "about" three years and agreed that they had "thoroughly" investigated each of the charges against him. He discussed the charges with his lawyers on "numerous occasions" and affirmed that they had done everything possible to assist him. He had "no complaints" regarding his representation. He and his lawyers had reviewed his petition to plead guilty, and he had no questions about it because he understood "every part" of it and had signed it.

The Petitioner understood the elements of first degree murder that the State would have had to prove beyond a reasonable doubt if he had decided to go to trial. The Petitioner also understood the elements of especially aggravated robbery and kidnapping. Further, he was aware of his rights to a jury trial, to confront and cross-examine witnesses presented against him, to subpoena witnesses, to decide whether to testify, and to appeal any conviction secured against him in a trial. The Petitioner knew he was “giving up” these rights by pleading guilty.

Regarding his sentences for the homicides, the Petitioner testified that he was aware that in Tennessee there were three possible punishments for first degree murder: life with the possibility of parole, life without the possibility of parole, and the death penalty. He also understood that if the trial court accepted his guilty pleas, he would be sentenced to life without the possibility of parole for each of the three murders. The details of his sentences for especially aggravated robbery and especially aggravated kidnapping were also known to him. Moreover, he understood that all his sentences would be served concurrently, but he agreed with the trial court that this distinction was “academic” because he would spend the rest of his “entire life” in prison without the possibility of parole.

His primary defense attorney (hereinafter “Trial Counsel”) also questioned him at the guilty plea submission hearing about his legal representation. The Petitioner affirmed that Trial Counsel had been assisted by an attorney representing the Petitioner on federal charges. Additionally, the Petitioner confirmed that he had two or more State-appointed defense attorneys, as well as multiple investigators, working on his case at all times.

The Petitioner discussed with Trial Counsel the possibility of mounting a defense to the charges by asserting that he had mental health issues sufficient to reduce his culpability. To that end, he met with a psychologist who reported back that no “mental health defense” was available to the Petitioner. The Petitioner had met with investigators who had been hired to assist in his defense, and they had talked to the Petitioner’s family members and “other people” about the Petitioner’s case in an effort to formulate a defense for him. The Petitioner had been kept “up to date” on his case and, according to him, Counsel had done everything he could do to assist him.

The Petitioner testified that it was his idea to stop concentrating on preparing a defense for trial and rather to “tell the whole story” behind his crimes in an effort to secure a favorable plea agreement. When he made that decision, “the death penalty was still on the table.” The Petitioner knew that Trial Counsel was prepared to file a number of pretrial motions that were not filed because the Petitioner himself decided to “resolve” his case by entering into a plea agreement. According to the Petitioner, his attorneys had done everything he had asked them to do, and there was nothing about his case that he did not understand.

Upon questioning by the State at his guilty plea submission hearing, he confirmed that he had testified on the behalf of the State at Roger Todd's trial¹ and that, at that time, he understood he would be sentenced to life without the possibility of parole when he entered his pleas. He also testified that the State had "held up" their end of his plea agreement.

At the close of his submission hearing, the trial court accepted his pleas of guilty and imposed his sentences.

B. Post Conviction Proceedings

On February 10, 2006, the Petitioner filed a pro se petition for post-conviction relief alleging that his guilty pleas were involuntarily entered because he did not receive the effective assistance of counsel. Counsel was appointed to represent the Petitioner in his post-conviction action, and an evidentiary hearing was held on December 1, 2006, during which the Petitioner and Trial Counsel testified.

The Petitioner informed that when Trial Counsel began representing him, he had already given statements to the authorities regarding his role in the murder of Jeffery Bell,² and Trial Counsel did not offer any suggestions as to how he could defend himself on that charge. At the outset, Trial Counsel told him that his "main job [was] to save [his] life basically." Early in the proceedings, federal prosecutors expressed their interest in interviewing the Petitioner and potentially charging him with federal crimes.

As federal prosecutors were contemplating taking over the Petitioner's prosecution, the Petitioner volunteered to Trial Counsel that he had information about "two other bodies." At that point, the authorities had not questioned the Petitioner about the murders of Patrick McKean or Jimmy Gerald Brandon. However, the Petitioner was concerned because Jerry Stone, who had also been charged with murdering Jeffery Bell, was communicating with the district attorney's office in an effort to secure an amended plea agreement. Trial Counsel advised him that he should "go on ahead of [Jerry] Stone and just give all the information that I know, tell everything that I know and just be honest, that it [would] only help [him]." They did not discuss "what [he] would get" in exchange for confessing to the murders of Patrick McKean and Jimmy Gerald Brandon; Trial Counsel only advised the Petitioner that it could help his case.

Prior to speaking with federal authorities, it was agreed that nothing he said would be used against him by federal or Tennessee prosecutors (who were also present at the interviews), so Trial Counsel advised him to "tell them about the bodies and just any other information [he] knew. Drug

¹ Before Todd's case was submitted to a jury, he decided to plead guilty to the murder of Jeffery Bell and was sentenced to life without the possibility of parole. Todd was never formally implicated in the murders of McKean or Brandon.

² Later in the post-conviction hearing, the Petitioner confirmed that he had executed valid Miranda waivers prior to giving a confession to the murder of Jeffery Bell. See Miranda v. Arizona, 384 U.S. 436, 479 (1966). In that statement, he admitted to attempting to shoot Bell twice by pointing a gun at him and pulling the trigger.

information, just whatever.” Additionally, he was aware that, in exchange for his information, the State was going to withdraw their intent to seek the death penalty. He “kept asking” Trial Counsel what his specific sentences would be, but Trial Counsel would only tell him that he did not know and that they would “just have to wait and see.”

Federal prosecutors interviewed the Petitioner approximately eight times, and during the interviews, he detailed his role in the murders of Patrick McKean and Jimmy Gerald Brandon. He led authorities to the locations behind Roger Todd’s residence where the bodies were buried. Patrick McKean’s body was recovered, but Jimmy Gerald Brandon’s was not. During the interviews, he also volunteered information about his involvement with illegal drugs and other crimes for which he was never prosecuted.

The Petitioner testified that he ultimately pled guilty and was twice sentenced to life without the possibility of parole by the State of Tennessee for the murders of Patrick McKean and Jimmy Gerald Brandon because he had confessed to those crimes based on Trial Counsel’s advice. However, he did not actually think that confessing helped his case. He explained that he did not think his confessions helped him “because [he was] in the penitentiary with three life sentences plus 40 years.” He further explained that he took umbrage with Trial Counsel’s advice because he received “basically” the same sentences as Jerry Stone, who was not as forthcoming. Jerry Stone received sentences identical to the Petitioner’s—except that Stone’s sentences were ordered to be served consecutively. Roger Todd was also sentenced to life without the possibility of parole for the murder of Jeffery Bell.

Asked why he entered his guilty pleas, the Petitioner answered as follows:

Basically I was in a position where either it was just life or death, you know . . . Because that was my options. You know, they was [sic] coming. They had the death penalty at one time on the table. Then they had this other option life in the penitentiary without parole. Most people are going to choose—most people in their right mind are going to choose life.

The Petitioner summarized his complaints about Trial Counsel and his other defense attorneys as follows:

Well, basically, once I got to the penitentiary and such I got around people who do law work for a living. And you know I got to studying up on the law. And I just feel that, you know, that they could have set up a better defense for me than just giving all that information knowing what they knew I was going to end up with.

Essentially, he felt that his attorneys could have mounted a better defense. The Petitioner could not say what better defense they could have put forth but only that he should have received “something better than three life sentences plus 40 years.”

On cross-examination, the Petitioner admitted that it was his decision to cooperate even though no promises had been made by the prosecutors regarding his potential sentences. He confirmed that Trial Counsel had “saved [his] life” by securing a deal that did not result in the death penalty and that was what he had asked Trial Counsel to do.

Trial Counsel testified that he had been practicing law since February of 1981 and that in 1984, he became an assistant district attorney. In August of 1989, he was sworn in as the public defender for that particular judicial district and has been in that position ever since. He was qualified by our supreme court to defend death penalty cases.

Trial Counsel testified that before the Petitioner was interviewed by federal authorities, they were aware that Jerry Stone had implicated the Petitioner in criminal matters beyond the murder of Jeffery Bell. He explained that the federal prosecutors would not enter into any manner of agreement before an interview with the Petitioner. At that time, he had an experienced federal defender appointed by a magistrate to represent the Petitioner even though no federal charges had been entered against the Petitioner.

When the Petitioner did divulge information to federal authorities about the killings of McKean and Brandon, State agencies were present, and he had an agreement with both governments that nothing the Petitioner said would be used against him. However, Jerry Stone had already implicated the Petitioner in the murders of McKean and Brandon, so the State likely would have been able to prosecute him for those murders based independently on Stone’s information. Trial Counsel also suspected that information about the McKean and Brandon murders was being divulged to the authorities from “sources” other than Jerry Stone.

His advice to the Petitioner regarding the decision to come forward with information about those murders was given against the background that the authorities already knew he had been involved, and “it became a matter of who was going to reveal and how it was going to be revealed and could it be revealed in a light favorable to [the Petitioner]. And that’s the hand we tried to play.” He counseled the Petitioner to plead guilty to those murders as well, in order to avoid being prosecuted based on the information supplied by Jerry Stone.

Further, upon fully investigating the Petitioner’s role in the murder of Jeffery Bell in light of the statement he had given before Trial Counsel was appointed, Trial Counsel realized that the Petitioner played a principle role in the crime and could not mount a viable defense rooted in reduced culpability. He hired several investigators to help him develop a defense for the Petitioner, but ultimately, there were “strong facts” demonstrating the Petitioner’s full culpability for the first degree murder of Jeffery Bell. In the final analysis, Trial Counsel felt at the time that the best the Petitioner could do was avoid the death penalty and be sentenced concurrently, so he advised him to accept the plea agreement covering all three murders.

Subsequent to the hearing, the post-conviction court entered a detailed written order denying relief. In relevant part, the post-conviction court found as follows:

After a review of the testimony at this hearing, and the transcript of the plea agreement, this Court discredits the testimony of the Petitioner as to his involuntary plea agreement and ineffective assistance from his trial counsel. This court finds defense counsel's performance was not deficient in any manner and the Petitioner was not prejudiced by the representation. Defense counsel performed with extraordinary training and skill and protected the Petitioner's interests with every decision and strategy pursued in his defense. This court believes the testimony of trial counsel that he thoroughly explained to the Petitioner the merits of his case and pursued any possible defenses.

The Petitioner received a fair resolution of his case, receiving concurrent life sentences as opposed to the death penalty. His co-defendant was providing information and the Petitioner provided all the facts of the cases in his testimony in other proceedings. This court finds the Petitioner knowingly and voluntarily waived his rights to counsel prior to providing statements to police.

Therefore, this court holds the Petitioner has failed to prove by clear and convincing evidence his claim of ineffective assistance of counsel. Furthermore, this court finds even if counsel was ineffective, the Petitioner has failed to prove any prejudice he suffered.

Analysis

On appeal, the Petitioner argues that the post-conviction court erred by dismissing his petition because he did, in fact, receive the ineffective assistance of counsel prior to entering his guilty pleas. Specifically, he asserts that Trial Counsel was deficient because he failed to secure an agreement with prosecutors prior to counseling the Petitioner to disclose information about any and all crimes in which he had been involved. Further he claims that the failure to secure an agreement prior to his statements shows that Trial Counsel "did not 'take all actions necessary to preserve' the rights of the [Petitioner]." (quoting Baxter v. Rose, 523 S.W.2d 930, 933 (Tenn. 1975)). The Petitioner contends that had every effort been made to protect his rights, and if he had been "adequately advised," a viable defense might have been raised at trial, and a different outcome could have resulted.

The Sixth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution guarantee a criminal defendant the right to representation by counsel. State v. Burns, 6 S.W.3d 453, 461 (Tenn. 1999); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). Both the United States Supreme Court and the Tennessee Supreme Court have recognized that the right to such representation includes the right to "reasonably effective" assistance, that is, within the range of competence demanded of attorneys in criminal cases. Strickland v. Washington, 466 U.S. 668, 687 (1984); Burns, 6 S.W.3d at 461; Baxter, 523 S.W.2d at 936.

A lawyer's assistance to his or her client is ineffective if the lawyer's conduct "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686. This overall standard is comprised of

two components: deficient performance by the defendant’s lawyer and actual prejudice to the defense caused by the deficient performance. Id. at 687; Burns, 6 S.W.3d at 461. The defendant bears the burden of establishing both of these components by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f); Burns, 6 S.W.3d at 461. The defendant’s failure to prove either deficiency or prejudice is a sufficient basis upon which to deny relief on an ineffective assistance of counsel claim. Burns, 6 S.W.3d at 461; Goad v. State, 938 S.W.2d 363, 370 (Tenn. 1996).

This two-part standard of measuring ineffective assistance of counsel also applies to claims arising out of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58 (1985). The prejudice component is modified such that the defendant “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.” Id. at 59; see also Hicks v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998).

In evaluating a lawyer’s performance, the reviewing court uses an objective standard of “reasonableness.” Strickland, 466 U.S. at 688; Burns, 6 S.W.3d at 462. The reviewing court must be highly deferential to counsel’s choices “and should indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Burns, 6 S.W.3d at 462; see also Strickland, 466 U.S. at 689. The court should not use the benefit of hindsight to second-guess trial strategy or to criticize counsel’s tactics, see Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982), and counsel’s alleged errors should be judged in light of all the facts and circumstances as of the time they were made, see Strickland, 466 U.S. at 690; Hicks v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998).

A trial court’s determination of an ineffective assistance of counsel claim presents a mixed question of law and fact on appeal. Fields v. State, 40 S.W.3d 450, 458 (Tenn. 2001). This Court reviews the trial court’s findings of fact with regard to the effectiveness of counsel under a de novo standard, accompanied with a presumption that those findings are correct unless the preponderance of the evidence is otherwise. Id. “However, a trial court’s conclusions of law—such as whether counsel’s performance was deficient or whether that deficiency was prejudicial—are reviewed under a purely de novo standard, with no presumption of correctness given to the trial court’s conclusions.” Id. (emphasis in original).

In this appeal, the Petitioner asserts that Trial Counsel’s performance was deficient because he did not secure an immunity agreement for the Petitioner prior to the Petitioner’s interviews with federal authorities. However, Trial Counsel’s testimony presented at the post-conviction evidentiary hearing—which was accredited by the post-conviction court—established that an agreement was made with federal and State prosecutors that nothing the Petitioner said would be used against him. Trial Counsel’s testimony further established that the State would have been able to prosecute him for the murders of McKean and Brandon based on information supplied by Jerry Stone.

Similarly, Trial Counsel’s testimony regarding the Petitioner’s confession to the murder of Jeffery Bell, and the fact that Jerry Stone was likely implicating the Petitioner in additional murders, established that the Petitioner was not on strong footing when he decided to begin negotiating a plea

agreement. In fact, by the Petitioner's own admission, his primary hope was to avoid the death penalty for his involvement in Bell's killing. In consideration of the Petitioner's circumstance at that time, his decision to divulge all potentially useful information to federal and State prosecutors was an informed and intelligent decision, and Trial Counsel's performance was not deficient because no immunity agreement was made.

We agree with the post-conviction court that the Petitioner has demonstrated neither that Trial Counsel's performance was deficient nor that the Petitioner was prejudiced because of Trial Counsel's representation.

In a related argument, the Petitioner asserts that the post-conviction court erred in finding that his pleas were knowingly, intelligently, and voluntarily entered. Specifically, the Petitioner contends that his pleas were not voluntary because Trial Counsel's failure to take every action to preserve his rights left him with no option but to plead guilty.

When a guilty plea is entered, a defendant waives certain constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront witnesses. Boykin v. Alabama, 395 U.S. 238, 243 (1969). "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." Id. at 242. Thus, in order to pass constitutional muster, a guilty plea must be voluntarily, understandingly, and intelligently entered. See id. at 243 n.5; Brady v. United States, 397 U.S. 742, 747 n.4 (1970). To ensure that a guilty plea is so entered, a trial court must "canvass[] the matter with the accused to make sure he [or she] has a full understanding of what the plea connotes and of its consequence[s]." Boykin, 395 U.S. at 244. The waiver of constitutional rights will not be presumed from a silent record. Id. at 243.

In State v. Mackey, 553 S.W.2d 337 (Tenn. 1977), the Tennessee Supreme Court set forth the procedure for trial courts to follow in Tennessee when accepting guilty pleas. Id. at 341. Prior to accepting a guilty plea, the trial court must address the defendant personally in open court, inform the defendant of the consequences of a guilty plea, and determine whether the defendant understands those consequences. See id.; Tenn. R. Crim. P. 11. A verbatim record of the guilty plea proceedings must be made and must include, without limitation, "(a) the court's advice to the defendant, (b) the inquiry into the voluntariness of the plea including any plea agreement and into the defendant's understanding of the consequences of his entering a plea of guilty, and (c) the inquiry into the accuracy of a guilty plea." Mackey, 553 S.W.2d at 341.

The transcript from the Petitioner's guilty plea submission hearing demonstrates that the trial court carefully and thoroughly questioned the Petitioner about every aspect of his decision to enter guilty pleas. It is equally clear that the Petitioner understood exactly what he was doing when he decided to plead guilty, and there is no indication that his pleas were anything other than voluntarily and intelligently entered. The trial court specifically discredited the testimony of the Petitioner on this issue and accredited the testimony of Trial Counsel. The trial court found that the Petitioner did not prove by clear and convincing evidence that his Trial Counsel's representation was deficient.

The trial court further found that the Petitioner failed to establish that he was in any way prejudiced by Trial Counsel's representation. The evidence in the record does not preponderate against these findings. This issue has no merit.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the post-conviction court order dismissing the Petitioner's petition for post-conviction relief.

DAVID H. WELLES, JUDGE