

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 26, 2006

**CHAD DAVIS TRISDALE v. STATE OF TENNESSEE**

**Direct Appeal from the Criminal Court for Cumberland County  
No. 7157 Leon C. Burns, Jr., Judge**

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**No. E2005-02498-CCA-R3-PC - Filed January 12, 2007**

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The petitioner, Chad Davis Trisdale, appeals from the post-conviction court's denial of post-conviction relief. On appeal, he contends that he received the ineffective assistance of counsel which caused him to enter an unknowing and involuntary guilty plea. Following our review of the record and the parties' briefs, we affirm the judgment of the post-conviction court denying post-conviction relief.

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

J.C. McLIN, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ALAN E. GLENN, JJ., joined.

C. Douglas Fields, Crossville, Tennessee, for the appellant, Chad Davis Trisdale.

Paul G. Summers, Attorney General and Reporter; Blind Akrawi, Assistant Attorney General; William E. Gibson, District Attorney General; and Gary McKenzie and Douglas Crawford, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**FACTS AND PROCEDURAL HISTORY**

After being transferred from juvenile court to criminal court, the petitioner was indicted on four counts of arson, one count of aggravated arson, one count of burglary, and one count of first degree felony murder. Pursuant to a negotiated plea agreement, the petitioner pled guilty to a lesser-included offense of second degree murder and received a thirty-five-year sentence as a multiple offender. A *nolle prosequi* was entered on the remaining counts of the indictment. Subsequently, the petitioner filed a pro se petition for post-conviction relief. Thereafter, counsel was appointed, an amended petition was filed, and an evidentiary hearing was held.

At the hearing, the petitioner's trial counsel testified that she was appointed to represent the petitioner after he was charged with multiple counts of arson and burglary which occurred on February 24, 2002. Subsequently, Kenneth Sharp, the victim, died on December 23, 2002, and a superceding indictment was issued charging the petitioner with felony murder. Counsel explained that she negotiated a plea agreement with the state. Counsel stated she reviewed the victim's autopsy report and discovery materials including newspaper articles. Counsel recalled that the newspaper articles indicated that the victim was awakened by the noise from the fire and ran through the flames to summon help from his neighbors. The victim received severe burns below his waist. Counsel stated that she did not investigate the victim's health and injuries after the fire. As counsel explained, "[t]here was no reason for me to think that [the victim] wasn't in terrible shape or had made any sort of progress towards recovery, or had made a recovery and had taken a turn for the worst . . . . Once he was in the hospital, as far as I knew, he never left." Counsel admitted, however, that she did not obtain the victim's medical records in order to evaluate his physical condition from

the time of the fire until he died. Instead, counsel relied on the autopsy report when negotiating the plea.

On cross-examination, counsel testified that the autopsy indicated the cause of the victim's death was from "complications of thermal burns." The autopsy also stated that the manner of death was homicide. Counsel also testified that prior to the plea hearing, she had filed a motion to suppress the petitioner's statement to police in which he confessed to setting fire to the victim's home. Counsel admitted that she did not review the victim's medical records but asserted the information she received did not indicate the victim's health was improving. Counsel recalled that at some point she learned that the victim had become brain dead while in the hospital.

Counsel testified that she discussed the case thoroughly with the petitioner and the petitioner understood his options. She also had the petitioner evaluated for mental competency and the evaluation confirmed that the petitioner was competent to stand trial. Counsel explained that the state informed her that the petitioner could either take the plea offer or argue the motion to suppress and proceed to trial. Counsel stated that she had previously examined some of the state's witnesses in the juvenile transfer proceeding and believed suppression of the defendant's confession unlikely. Counsel explained that based upon the possibility of being convicted of first degree felony murder and the possibility of consecutive sentencing, she advised the petitioner to take the state's offer of thirty-five years.

The petitioner testified that counsel did not discuss with him the cause of the victim's death and how it related to whether or not he could be charged with felony murder. The petitioner asserted he would have gone to trial had he thought there was a chance to argue that his actions in starting the fire did not cause the victim's death. On cross-examination, the petitioner admitted to starting the fire in the victim's home. He also admitted that the victim died. The petitioner further acknowledged that his counsel met with him to discuss his case and explain things to him. He stated that counsel advised him of what the state had to prove in order to convict him of felony murder and of the possible punishment he faced if convicted. He admitted that he pled guilty rather than risk life imprisonment.

Following the evidentiary hearing, the post-conviction court entered an order denying post-conviction relief. Among other things, the court found that no evidence was presented at the hearing to indicate that the petitioner was not fully advised on the ramifications of entering into a negotiated plea. The court found that nothing in the record suggested that the plea was anything but knowingly and voluntarily entered. The court found that no evidence presented at the hearing suggested that the cause of the victim's death was anything other than the injuries sustained as a result of the fire. The court found that the evidence presented at the hearing suggested that the petitioner was fully aware of the victim's condition at the time of the fire and knew that the victim's condition continually worsened until the date of his death. The court found that no evidence was presented to suggest that trial counsel was ineffective in her representation of the petitioner.

## **ANALYSIS**

On appeal, the petitioner contends that the post-conviction court erred in finding that he received the effective assistance of counsel and that he entered a knowing and voluntary guilty plea. Essentially, he argues that his counsel was ineffective in failing to investigate medical records other than the autopsy report in order to ascertain the cause of the victim's death. According to the petitioner, the victim's medical records showed that the victim had minimal inhalation injuries and died of complications stemming from a cardiac arrest. The medical records also showed early improvement in the victim's health including the fact that his lungs were clear and burn wounds were healing. The petitioner argues that had his counsel investigated and advised him of the possibility that his act of arson did not cause the victim's death, he would not have pled guilty.

In order for a petitioner to succeed on a post-conviction claim, the petitioner must prove the allegations set forth in his petition by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f). On appeal, this court is required to affirm the post-conviction court's findings unless the petitioner proves that the evidence preponderates against those findings. *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). Our review of the post-conviction court's factual findings, such as findings concerning the credibility of witnesses and the weight and value given their testimony, is de novo with a presumption that the findings are correct. *See id.* Our review of the post-conviction court's legal conclusions and application of law to facts is de novo without a presumption of correctness. *Fields v. State*, 40 S.W.3d 450, 457-58 (Tenn. 2001).

To establish the ineffective assistance of counsel, the petitioner bears the burden of proving that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the

defense rendering the outcome unreliable or fundamentally unfair. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also Arnold v. State*, 143 S.W.3d 784, 787 (Tenn. 2004). Deficient performance is shown if counsel's conduct fell below an objective standard of reasonableness under prevailing professional standards. *Strickland*, 466 U.S. at 688; *see also Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975) (establishing that representation should be within the range of competence demanded of attorneys in criminal cases). Prejudice is shown if, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceeding would have been different. *Strickland*, 466 U.S. at 694. A fair assessment of counsel's performance "requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* at 689; *see also Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002). Both deficient performance and prejudice must be established to prove ineffective assistance of counsel. *Strickland*, 466 U.S. at 697; *see also Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996). If either element of ineffective assistance of counsel has not been established, a court need not address the other element. *Strickland*, 466 U.S. at 697.

When a petitioner claims ineffective assistance of counsel in relation to a guilty plea, the petitioner must show a reasonable probability that, but for the errors of his counsel, he would not have pled guilty. *See Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Adkins v. State*, 911 S.W.2d 334, 349 (Tenn. Crim. App. 1994). When determining the knowing and voluntary nature of the 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); *see also*

*State v. Pettus*, 986 S.W.2d 540, 542 (Tenn. 1999). A petitioner's solemn declaration in open court that his or her plea is knowing and voluntary creates a formidable barrier in any subsequent collateral proceeding because these declarations "carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74 (1977).

In the instant case, the record fully supports the post-conviction court's findings that the petitioner received the effective assistance of counsel and that the petitioner's guilty plea was knowing and voluntary. The record reflects that counsel investigated the petitioner's case, reasonably relied on the autopsy report, and correctly informed the petitioner about his potential sentence and his available options, including going to trial. The record also reflects that counsel informed the petitioner about the likelihood of success given the petitioner's confession and the petitioner's exposure to a much longer sentence should the case proceed to trial. The record further reflects that the petitioner was competent, was fully informed of his rights, and understood his guilty plea.

In contrast, other than speculation, nothing in the record proves that the victim's death was not caused by injuries sustained as a result of the fire started by the petitioner. Notably, "[o]ne who unlawfully inflicts a dangerous wound upon another is held for the consequences flowing from such injury, whether the sequence be direct or through the operation of intermediate agencies dependent upon and arising out of the original cause." *State v. Roberson*, 644 S.W.2d 696, 698 (Tenn. Crim. App. 1982). To convict, it is not necessary that the defendant's "act or failure to act be the sole cause, nor the most immediate cause of death. It is only necessary that the defendant unlawfully

contributed to the death of the deceased.” *Id.* To reiterate, the autopsy states that the victim died of complications of thermal and smoke injuries. Additionally, excerpts of the victim’s medical records<sup>1</sup> show that the victim had burns on 41% of his body, had an inhalation injury, underwent various surgeries and skin grafts, and suffered bleeding, infections, anemia, poor healing, and other medical complications before he died. In sum, the record does not preponderate against the trial court’s findings. Accordingly, the petitioner is not entitled to relief.

### CONCLUSION

Based on the foregoing reasoning and authorities, we affirm the judgment of the post-conviction court.

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J.C. McLIN, JUDGE

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<sup>1</sup> According to the transcript of the post-conviction hearing, the victim’s entire medical record consisted of approximately 10,000 pages.