

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 30, 2008

CHARLES CLIFFORD HUDGINS v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Hamilton County
No. 252450 Rebecca Stern, Judge**

No. E2006-02501-CCA-R3-PC - June 16, 2008

The petitioner, Charles Clifford Hudgins, appeals the Hamilton County Criminal Court's denial of his petition for post-conviction relief challenging his conviction for second degree murder based upon the allegations of ineffective assistance of counsel, an involuntary guilty plea and the state's failure to provide exculpatory information. After a full evidentiary hearing, the trial court found that the petitioner failed to prove his allegations by clear and convincing evidence. Following our review, we affirm the judgment of the trial court.

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

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Ardena Garth, District Public Defender (at post-conviction hearing); Brian Clay Johnson (on appeal), attorneys for appellant, Charles Clifford Hudgins.

Robert E. Cooper, Jr., Attorney General & Reporter; Elizabeth B. Marney, Assistant Attorney General; William B. Cox, District Attorney General; and William Hall, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

The record reflects that the petitioner was indicted for the first degree murder of Charles Keith Bower, a guest at his apartment. On January 14, 2004, the petitioner entered a guilty plea to second degree murder and received a sentence of fifteen years as a Violent Offender. On January 12, 2005, the petitioner filed a petition for post-conviction relief. The petition alleges that he was denied the effective assistance of counsel because trial counsel failed to investigate his case properly for the purposes of presenting an adequate defense or advise him relative to his guilty plea. In a similar allegation, the petition alleges that the plea was involuntary. The petition also alleges that the state failed to disclose information relating to gunshot residue analysis that could neither confirm nor exclude the petitioner as the person who shot the victim.

After appointment of counsel and appropriate amendment to the petition, the trial court held an evidentiary hearing on October 23, 2006. The petitioner testified that Jeffrey Roberts, an eye witness to the offense, told him that he was the one who had shot the victim. He further stated that after his guilty plea, he learned that the gunshot residue testing revealed no evidence of gunshot residue on the defendant, but that there was a presence of gunshot residue detected on Roberts.

The petitioner asserted that he had no choice but to plead guilty because he “stayed locked up for ten months” prior to his trial date. The petitioner claimed that trial counsel failed to interview several witnesses who would have exonerated him, although his testimony was nonspecific as to the names of the witnesses and the substance of their testimony. In summation, the petitioner stated that “[i]t don’t [sic] seem like he did anything because if he had have [sic] I wouldn’t have been locked up, you know. Because a blind man could see through all this here. They ain’t [sic] got anything on me but what Mr. Roberts said. Mr. Roberts said that, and Mr. Roberts said that. And Mr. Roberts is a big liar too.” On cross-examination, the petitioner admitted that he gave a statement to the police but denied telling the investigators that he had shot the victim. He indicated that his previous admissions were lies based upon what Mr. Roberts had told him happened on the night of the incident.

Trial counsel testified that the petitioner initially told him that he could not remember what had happened because the three men who were present had all been drinking on the night of the incident. The second time he was asked, the petitioner told trial counsel that he shot the victim in self-defense. The third time they spoke, the petitioner indicated that he shot the victim accidentally. Upon the petitioner’s direction, trial counsel interviewed Roberts who gave a detailed account of the events on the night of the shooting that was consistent with the petitioner’s statement to the police.

Trial counsel testified that he spent a considerable amount of time with the assistant district attorney general discussing the case and going through open-file discovery. He explained that the case was particularly difficult to defend because the petitioner, charged with premeditated murder, claimed that he and the victim had argued over a gun that the petitioner thought the victim had stolen but that was later found in the petitioner’s possession. He testified that the only reason the state was willing to allow a plea to a lesser charge was because of the petitioner’s poor physical health related to kidney disease and paraplegia. Trial counsel stated that it was a choice between the minimum fifteen year sentence for second degree murder or a fifty-one year sentence for first degree murder and that he told the petitioner that it was the petitioner’s decision to risk a conviction with a life sentence if the case had gone to trial.

ANALYSIS

The burden in a post-conviction proceeding is on the petitioner to prove his grounds for relief by clear and convincing evidence. Tenn. Code Ann. §40-30-110(f). 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). 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.

Under the Sixth Amendment to the United States Constitution, when a claim of ineffective assistance of counsel is made, the burden is on the petitioner to show (1) that counsel's performance was deficient and (2) that the deficiency was prejudicial. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984); see Lockart v. Fretwell, 506 U.S. 364, 368-372, 113 S.Ct. 838, 842-44 (1993). In other words, a showing that counsel's performance falls below a reasonable standard is not enough; rather, the petitioner must also show that but for the substandard performance, "the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2068. The Strickland standard has been applied to the right to counsel under Article I, Section 9 of the Tennessee Constitution. State v. Melson, 772 S.W.2d 417, 419 n.2 (Tenn. 1989). In the context of a guilty plea as in this case, the effective assistance of counsel is relevant only to the extent that it affects the voluntariness of the plea. Therefore, to satisfy the second prong of Strickland, the petitioner 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." Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985); see also Walton v. State, 966 S.W.2d 54, 55 (Tenn. Crim. App. 1997).

At the conclusion of the evidentiary hearing, the trial court denied the petitioner's requested relief by stating:

All right. Well, it's Mr. Hudgins' burden and nothing I heard establishes that in any way was [trial counsel] ineffective in his representation. There's nothing to establish that the plea was not knowing and voluntary in this case. And that had [trial counsel] done any of the things, like called certain witnesses that weren't called, that it would have made any difference whatsoever in his case. So the petition is denied and overruled.

We cannot conclude that the evidence preponderates against these findings. The record reflects that the petitioner made a knowing and voluntary choice to plead guilty to a lesser charge and receive a much lesser sentence rather than risk a trial for first degree murder with a potential punishment of fifty-one years. Trial counsel testified that he fully investigated the petitioner's case prior to presenting the petitioner with the plea agreement. The petitioner's allegation that gunshot residue test results exonerated him is refuted by the gunshot residue report indicating inconclusive findings for all three individuals present at the offense; a finding of inconclusive neither inculpatates nor exculpates anyone at the scene. We also note that the petitioner alleges for the first time on appeal that trial counsel's performance was deficient for failing to file a motion to suppress. However, this allegation is absent from the post-conviction petition and, thus, was not addressed at the post-conviction evidentiary hearing. Therefore, we conclude that this issue is waived. State v. Turner, 919 S.W.2d 346 (Tenn. Crim. App. 1995) (party may not raise issue for the first time on appeal). In summary, we agree with the trial court that the petitioner has failed to prove his post-

conviction allegations by clear and convincing evidence. Therefore, we conclude that the judgment of the trial court should be affirmed.

CONCLUSION

In consideration of the foregoing, the judgment of the trial court denying the petition for post-conviction relief is affirmed.

D. KELLY THOMAS, JR., JUDGE