

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 26, 2007

**STEVE LAWSON v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Knox County  
No. 83294 Richard R. Baumgartner, Judge**

**No. E2006-02246-CCA-R3-PC - Filed October 15, 2007**

The petitioner, Steve Lawson, pled guilty in Knox County Criminal Court to aggravated assault, a class C felony, and was sentenced as a Range II, multiple offender to eight years in confinement. He seeks post-conviction relief, contending that his trial counsel's ineffectiveness led to an unknowing and involuntary guilty plea. The trial court denied relief, and the petitioner appeals. We affirm the trial court's judgment.

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

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which THOMAS T. WOODALL and D. KELLY THOMAS, JR., JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the appellant, Steve Lawson.

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Kenneth F. Irvine, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The petitioner's conviction related to an assault upon his girlfriend. The record reflects that the petitioner accepted a plea offer from the state, by which the petitioner pled guilty to aggravated assault and received an eight-year sentence. In addition, the state agreed not to oppose the petitioner's application for probation. However, with the petitioner's presentence report showing a criminal history consisting of forty-seven misdemeanor convictions, including several assaults, and five felony convictions, the trial court refused to grant probation and ordered the petitioner to serve his sentence in confinement.

At the post-conviction hearing, the petitioner testified that his trial counsel told him he would receive probation if he pled guilty. He said counsel did not explain sentencing ranges to him. He acknowledged that he had a lengthy criminal history, but he said he did not discuss his

criminal history with counsel. He said that counsel merely told him he would get eight years of probation if he pled guilty and that he entered the plea because he thought he was getting probation. The petitioner at one point said he would have pled guilty if he knew he would not get probation but later said he would have insisted upon going to trial if he knew he would not get probation. He said he thought he had a good chance of “beating the case” at trial because one of the state’s witnesses was not available to testify.

The petitioner testified that he was released from custody after entering his plea but before he was sentenced. He said he missed a court date during that time because he was hospitalized. He said that when he was released from custody, he thought he was already on probation and that when he was returned to jail, he thought it was due to his missing court. He maintained that the most important factor in his pleading guilty was counsel’s telling him he would get probation.

On cross-examination, the petitioner acknowledged that he was under oath during his plea hearing. He said at one point that he recalled the trial judge saying the decision to grant probation was up to the judge, but he later said he did not recall the judge saying this. He said he knew the trial judge would look at his prior convictions in deciding his sentence, but he said he was not aware of what effect his criminal history would have on his ability to receive probation.

The petitioner’s trial counsel testified that he discussed possible sentences with the petitioner. He said that he had “extensive dialogue” with the prosecutor regarding a plea agreement and that he presented the options to the petitioner. He said he told the petitioner “that the state had agreed not to oppose probation, and that they said eight years would be the sentence . . . at whatever range he was, and that they would not oppose probation, and that’s where [they] left it.” He recalled the trial judge making several comments during the plea hearing that it was the court’s decision whether to grant probation. He said the trial judge also said that the petitioner would have the option of withdrawing his guilty plea if he did not like the sentence he received. Trial counsel said he thought it was clear that the trial judge would ultimately decide if the petitioner would receive probation. He said that after the sentencing, he had discussions with the petitioner about whether the petitioner wanted to withdraw his guilty plea. He said the petitioner did not want to withdraw the plea and did not want to appeal his sentence.

On cross-examination, trial counsel testified that he did not think the petitioner’s failure to appear in court when he was in the hospital had any bearing on his sentence. He said he was aware of the petitioner’s extensive criminal history, which gave him the impression that the petitioner was familiar with courts and understood the process of accepting a guilty plea. He said he had extensive discussions with the petitioner before entering the guilty plea, although he did not remember the specifics of what they discussed. He said he recommended that the petitioner accept the state’s plea offer, despite his extensive criminal history, because he thought the petitioner would face a longer sentence if convicted after a trial. He agreed that probation was a very important issue to the petitioner and that the petitioner’s concern was spending a minimal amount of time in jail. He said he did not recall discussing probation with the petitioner in terms of the petitioner’s likelihood of receiving probation. He said he did tell the petitioner that his criminal history would bear upon his chances of receiving probation. He said he believed the petitioner had a reasonable chance of receiving probation despite his criminal history because he had seen other people with extensive records receive probation. He said he

wanted to try to get the petitioner involved in counseling programs as a part of his sentence but that he never had the opportunity to discuss alternative sentencing with the trial court.

In rebuttal, the petitioner testified that he did not recall having a discussion with his trial counsel about withdrawing his guilty plea after the court refused to grant probation.

The trial court denied relief, finding that, “it’s absolutely crystal clear from the transcript of the submission hearing that I explained to [the petitioner] in detail . . . what the options were and that I would be the one to make the final decision as to whether or not [the petitioner] got probation in this case.” The trial court accredited counsel’s testimony that he discussed with the petitioner whether the petitioner wanted to withdraw his guilty plea and that the petitioner declined to do so. The court found that the petitioner did not meet his burden of proving by clear and convincing evidence that his trial counsel was ineffective.

The burden in a post-conviction proceeding is on the petitioner to prove his grounds for relief by clear and convincing evidence. T.C.A. § 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, 456-57 (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. Post-conviction relief may only be given if a conviction or sentence is void or voidable because of a violation of a constitutional right. T.C.A. § 40-30-103.

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 Lockhart v. Fretwell, 506 U.S. 364, 368-72, 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. at 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 Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975), our supreme court decided that attorneys should be held to a general standard of whether the services rendered were within the range of competence demanded of attorneys in criminal cases. When a petitioner claims that the ineffective assistance of counsel resulted in a guilty plea, the petitioner must prove prejudice by showing that but for counsel’s errors, the petitioner would not have entered the plea and would have insisted upon going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985). Failure to satisfy either the deficiency or prejudice prong results in the denial of relief. Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

When evaluating the knowing and voluntary nature of a guilty plea, the United States Supreme Court has held that “[t]he standard was and remains 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, 91 S. Ct. 160, 164 (1970). The court reviewing the voluntariness of a guilty plea must look to the totality of the circumstances. See State v. Turner, 919 S.W.2d 346, 353 (Tenn. Crim. App. 1995). The circumstances include

the relative intelligence of the defendant; the degree of his familiarity with criminal proceedings; whether he was represented by competent counsel and had the opportunity to confer with counsel about the options available to him; the extent of advice from counsel and the court concerning the charges against him; and the reasons for his decision to plead guilty, including a desire to avoid a greater penalty that might result from a jury trial.

Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993) (citing Caudill v. Jago, 747 F.2d 1046, 1052 (6th Cir. 1984)). A plea resulting from ignorance, misunderstanding, coercion, inducement, or threats is not “voluntary.” Id.

In the present case, the petitioner contends that his trial counsel was ineffective in that he misled the defendant into thinking he would receive probation even though counsel should have known that, given the petitioner’s criminal history, the petitioner “was extremely unlikely to get probation.” The petitioner argues that his belief that he would receive probation was “particularly important” in his decision to plead guilty. The state argues that the record does not preponderate against the trial court’s findings that the petitioner was aware that his plea agreement did not guarantee him probation, that he had the opportunity to withdraw his guilty plea after sentencing, and that, thus, the petitioner is not entitled to relief. We agree with the state.

As reflected in the transcript of the submission hearing, the trial court told the petitioner that although the state agreed not to oppose the petitioner’s application for probation, the court would ultimately determine whether the petitioner would receive probation. The court further stated that, because trial counsel informed the court that the petitioner’s understanding was that he would receive probation, the petitioner would have the opportunity to withdraw his guilty plea if he was not satisfied with the sentence he received. The petitioner stated under oath that he understood his plea and the possible sentences. The trial court accredited counsel’s testimony that he discussed with the petitioner whether the petitioner wanted to withdraw his guilty plea and that the petitioner did not want to. We conclude that the petitioner’s guilty plea was entered into knowingly and voluntarily and that it was not the result of counsel’s ineffectiveness.

Based on the foregoing, we affirm the judgment of the trial court denying the petitioner post-conviction relief.

---

JOSEPH M. TIPTON, PRESIDING JUDGE