IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
July 19, 2005 Session

STEVEN L. CRAWLEY v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Davidson County
No. 2001-D-2190 Steve R. Dozier, Judge

No. M2004-01928-CCA-R3-PC - Filed September 15, 2005

In January 2003, the petitioner, Steven L. Crawley, pled guilty to possession of over .5 grams of cocaine for resale and was sentenced, as a Range I offender, to eight years confinement, which was to be served consecutively to an identical sentence for another conviction for the same offense but occurring at an earlier date, both of which were to be served concurrently to a thirty-day sentence for resisting arrest. Subsequently, he filed a petition for post-conviction relief, alleging that trial counsel was ineffective for failing to interview the petitioner's codefendant as to whether the cocaine in question was his and the petitioner's cousin, Barbara Crawley, who would have testified, *inter alia*, that the petitioner had been invited to her residence on the day of his arrest and for failing to file a motion to suppress evidence of an illegal search of him by police officers or a motion to sever his case from that of his codefendant. Following an evidentiary hearing, the post-conviction court dismissed the petition, and we affirm that action.

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

ALAN E. GLENN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ROBERT W. WEDEMEYER, JJ., joined.

Charles E. Walker, Nashville, Tennessee, for the appellant, Steven L. Crawley.

Paul G. Summers, Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Pam Anderson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

Five witnesses testified at the evidentiary hearing, four for the petitioner and one for the State. The petitioner's first witness was his cousin, Barbara Faye Crawley, who testified that on May 4, 2001, she was a resident of the Metropolitan Development and Housing Agency

("MDHA") housing project where the drugs were seized and the petitioner was arrested. She said that, earlier that day, he had visited her apartment and they had talked. About forty-five minutes after he had left, she was told by a neighbor that he had been arrested. She said she had not asked that the petitioner's name be placed on the "ban list," which would have prevented him from entering the complex; and, as far as she knew, his name had never been on it.

Charles Crenshaw testified that he was the Assistant Director of the MDHA Housing Management Department and had brought to court a copy of the "ban list or No-Trespassing List," which sets out the names of those persons who are not allowed on MDHA property. He said that the petitioner's name was not on the list.

The petitioner testified that, on the night of his arrest, he had just left Barbara Crawley's residence in the housing project and was walking to his car when an officer stopped him and said that he was being arrested for trespassing. He said that he had not been banned from the property. He was fifteen to twenty feet from the blue Nissan Maxima automobile where officers found drugs. He acknowledged that, although the automobile was not his and he did not know who owned it, he had its key in his pocket. The officers asked if the drugs were his, and he said they were not. He heard his cousin, Troy Crawley, admit to officers that the drugs were his. He said that if his case had gone to trial, Barbara Crawley would have testified as she had at the hearing, as would have Charles Crenshaw. He said that his trial attorney had not discussed with him the filing of a motion to sever and that he had told his attorney that his "charge partner," Troy Crawley, had admitted that the drugs were his.

Troy Crawley testified that he was the petitioner's cousin and had been with him the night they were both arrested at the housing project. He said that as they were talking with Barbara Crawley, the police "just rushed up," told them to put their hands up, and started searching. At the time, they were about fifteen feet from Ms. Crawley's porch, where she was standing. He said he did not know who owned the automobile where the drugs were found or why the petitioner had a key to the vehicle. However, he said that previously he had seen the petitioner driving the vehicle but was unsure when it had been in relation to their arrest.

The State's sole witness was the petitioner's trial attorney, who testified that he had been practicing law since 1997. He recalled that, according to Troy Crawley's lawyer, his client claimed that the drugs in the vehicle were not his. He was told that, at the time of their arrest, the petitioner and Troy Crawley were leaning against the vehicle, and the petitioner had its key in his pocket. Counsel testified that he had not filed a motion to suppress because Officer Gish, who was involved in the arrest of the petitioner and his cousin, said he had personally told the petitioner not to be on the property and his instruction had been the officer's original reason for approaching the petitioner the night of the arrest. Counsel said that Metro police officers regularly patrolled the housing authority properties and were allowed, apparently by the housing authority, "to approach anyone who they know not to be leaseholders, or that are obviously engaged in any kinda [sic] criminal activity." He said a motion to suppress would have been "a waste of time."

As for Barbara Crawley's testimony that she had allowed the petitioner and Troy Crawley to be on the property, counsel said there was, as he recalled, "a huge gap in time" from

when they had been with her and when they were arrested. He said he had not filed a motion to sever but would have done so if it had appeared that the matter would go to trial. He said the petitioner had an extensive criminal record, "from the time he was eighteen, he had convictions, felony and a number of misdemeanor convictions, in addition to a lot of arrests that didn't come to fruition." At the time of his arrest on the present matter, the petitioner had two other pending cases, with his having been released on bond on the first and then arrested for the second, for which he also was released on bond. After his arrest on the present matter, the petitioner's bond was set at an amount that he was unable to make. He pled guilty in each of the three cases and received the minimum sentence in each. Because felonies two and three had been committed while the petitioner was on bond from a previous case, the sentences had to be served consecutively.

ANALYSIS

Standard of Review

The post-conviction petitioner bears the burden of proving his allegations by clear and convincing evidence. See Tenn. Code Ann. § 40-30-110(f) (2003). When an evidentiary hearing is held in the post-conviction setting, as occurred in this case, the findings of fact made by the court are conclusive on appeal unless the evidence preponderates against them. See Tidwell v. State, 922 S.W.2d 497, 500 (Tenn. 1996). Where appellate review involves purely factual issues, the appellate court should not reweigh or reevaluate the evidence. See Henley v. State, 960 S.W.2d 572, 578 (Tenn. 1997). However, review of a trial court's application of the law to the facts of the case is *de novo*, with no presumption of correctness. See Ruff v. State, 978 S.W.2d 95, 96 (Tenn. 1998). The issues of deficient performance of counsel and possible prejudice to the defense are mixed questions of law and fact and, thus, subject to *de novo* review by the appellate court. See State v. Burns, 6 S.W.3d 453, 461 (Tenn. 1999).

In order to determine the competence of counsel, Tennessee courts have applied standards developed in federal case law. See State v. Taylor, 968 S.W.2d 900, 905 (Tenn. Crim. App. 1997) (noting that the same standard for determining ineffective assistance of counsel that is applied in federal cases also applies in Tennessee). The United States Supreme Court articulated the standard in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), which is widely accepted as the appropriate standard for all claims of a convicted petitioner that counsel's assistance was defective. The standard is firmly grounded in the belief that counsel plays a role that is "critical to the ability of the adversarial system to produce just results." Id. at 685, 104 S. Ct. at 2063. The Strickland standard is a two-prong test:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. at 687, 104 S. Ct. at 2064. The Strickland Court further explained the meaning of "deficient performance" in the first prong of the test in the following way:

> In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. . . . No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.

Id. at 688-89, 104 S. Ct. at 2065. The petitioner must establish "that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms." House v. State, 44 S.W.3d 508, 515 (Tenn. 2001) (citing Goad v. State, 938 S.W.2d 363, 369 (Tenn. 1996)).

As for the prejudice prong of the test, the Strickland Court stated: "The defendant must show that there is 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." 466 U.S. at 694, 104 S. Ct. at 2068; see also Overton v. State, 874 S.W.2d 6, 11 (Tenn. 1994) (concluding that petitioner failed to establish that "there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different").

Courts need not approach the Strickland test in a specific order or even "address both components of the inquiry if the defendant makes an insufficient showing on one." 466 U.S. at 697, 104 S. Ct. at 2069; see also Goad, 938 S.W.2d at 370 (stating that "failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim").

The reviewing court must indulge a strong presumption that the conduct of counsel falls within the range of reasonable professional assistance, see Strickland, 466 U.S. at 690, 104 S. Ct. at 2066, and may not second-guess the tactical and strategic choices made by trial counsel unless those choices were uninformed because of inadequate preparation. See Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982). The fact that a strategy or tactic failed or hurt the defense does not alone support the claim of ineffective assistance of counsel. See Thompson v. State, 958 S.W.2d 156, 165 (Tenn. Crim. App. 1997). Finally, a person charged with a criminal offense is not entitled to perfect representation. See Denton v. State, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). As explained in State v. Burns, 6 S.W.3d 453, 462 (Tenn. 1999), "[c]onduct that is unreasonable under the facts of one case may be perfectly reasonable under the facts of another."

"In cases involving a guilty plea or plea of *nolo contendere*, the petitioner must show 'prejudice' by demonstrating that, but for counsel's errors, he would not have pleaded guilty but would have insisted upon going to trial." Hicks v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998) (citing Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985); Bankston v. State, 815 S.W.2d 213, 215 (Tenn. Crim. App. 1991)). Hill explains the showing of prejudice which must be made by a petitioner who entered a guilty plea:

> In many guilty plea cases, the "prejudice" inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial.

474 U.S. at 59, 106 S. Ct. at 370.

We will examine the petitioner's claims that trial counsel was ineffective.

I. Failure to File Motion to Suppress

As to this allegation, the petitioner argues that trial counsel should have filed a motion to suppress drugs seized from the vehicle that he was near at the time of his arrest. In his *pro se* petition, he claims that, "[a]fter searching petitioners's car[,] the officer began searching another vehicle a few yards away that was not registered to the petitioner. Inside the car the officers found drugs." Likewise, at the evidentiary hearing, when asked, "[C]an you tell the Court where that vehicle was parked at, that's in question, where the drugs were found?" the petitioner responded, "It was approximately fifteen, twenty feet from where I was, from my car – where my car was parked at. I was going to my vehicle." As to the blue Nissan Maxima automobile where the drugs were located, the petitioner was asked, "[W]hose vehicle was that?" and responded, "It came back to a wom[a]n; I'm not for sure who it was." Thus, the petitioner disclaimed any interest in the vehicle searched or the drugs seized. Nonetheless, he argues that counsel was ineffective in not filing a motion to suppress the fruits of this search.

As to this claim, the post-conviction court found that a motion to suppress would have been unsuccessful:

> Specifically, the petitioner contends that he was not in his vehicle at the time of his arrest and no probable cause was present to enable the officer to search the petitioner's vehicle incident to arrest. The petitioner's cousin, Barbara Crawley, testified that the petitioner was only at her home between 4-5 p.m. The petitioner was arrested and booked at approximately 2:30 a.m. on the following day. According to the officer's affidavit, the petitioner and his co-defendant were standing near his vehicle at the time of his arrest for [c]riminal [t]respass. The officer stated in the affidavit that he noticed a green plant like material in plain view of the vehicle as well as a white rock like substance. Notwithstanding the fact the petitioner initially denied ownership of the vehicle, a further search of the petitioner revealed a key to this vehicle. The Court finds[,] based on the proof, that the petitioner would have been unsuccessful in his attempt to suppress this evidence. Therefore, the petitioner has failed to demonstrate how he was prejudiced by his counsel's failure to file such motion.

As we will explain, the record fully supports this finding by the post-conviction court.

One who challenges the reasonableness of a search or seizure has the initial burden of establishing a legitimate expectation of privacy in the place or thing to be searched. State v. Oody, 823 S.W.2d 554, 560 (Tenn. Crim. App. 1991). One who does not have such an expectation of privacy lacks "standing" to challenge the search. State v. Patterson, 966 S.W.2d 435, 441 n.5 (Tenn. Crim. App. 1997). The petitioner's denial of any interest, ownership or otherwise, as to the vehicle where the drugs were found resulted in his having no legitimate expectation of privacy and, thus, no standing to object to its being searched. This is a fatal flaw in his argument. As to this claim, we conclude, as did the post-conviction court, that the petitioner failed to show that trial counsel was ineffective by not filing a fruitless motion to suppress. The petitioner's own testimony would have doomed such a claim.

II. Failure to Interview Material Witnesses

The petitioner claims that trial counsel was ineffective for not interviewing codefendant Troy Crawley, who "admitted that the drugs found in the vehicle belonged to him," or Barbara Crawley, who would have said the petitioner "had permission to be at her residence and that he was not trespassing."

As to this claim, the post-conviction court found that, although Troy Crawley testified at the evidentiary hearing that "he placed the drugs in the car the night before their arrest and the petitioner was unaware of their existence," trial counsel "testified that this was the first time that he ever heard that Troy Crawley wanted to take responsibility for the drugs." The court credited the testimony of the trial attorney on this point, and the record supports this determination. Continuing with this claim, the petitioner asserted that trial counsel was ineffective in not filing a motion to sever his case from that of Troy Crawley. The post-conviction court found that "[s]ince counsel was not aware of the statement by the co-defendant, he would have not filed a motion to sever on this basis." The record supports this determination as well.

Additionally, the petitioner claimed that trial counsel was ineffective in not interviewing his cousin, Barbara Crawley, who testified at the hearing that the petitioner had visited her residence shortly before he was arrested. She said that she was told of the arrest by a neighbor. Further, she said the petitioner was not on the list of persons who were banned from the project. There are several problems with the petitioner's view of the value of this testimony. First, much of it was irrelevant, for it would not affect the legality of the vehicle search. Additionally, her testimony contradicted that of Troy Crawley, who said she was outside and only about fifteen feet away when they were arrested.[1] Further, the petitioner's trial counsel testified he recalled there was a substantial time gap between when the petitioner had left Barbara Crawley's apartment and when he was arrested. With such radical contradictions in their testimony, we

---

1 We note that, according to the post-conviction court's order dismissing the petition, an affidavit, which is not contained in the record on appeal, of the arresting officer said that the petitioner was not arrested and booked until "approximately 2:30 a.m." the morning after he had left Barbara Crawley's apartment, and officers had seen in plain view in the vehicle the petitioner was near at the time of his arrest "a green plant like material . . . as well as a white rock like substance."

doubt that few, if any, attorneys would seek benefit in presenting them as witnesses, had this matter gone to trial. Further, the petitioner ignores the fact that neither he nor these two witnesses offered an explanation as to why and how he happened to be carrying the key to the vehicle containing the drugs, although disclaiming knowledge of either.

Finally, the petitioner asserted that, because of the acts and omissions of trial counsel, "he did not voluntarily and knowingly enter a plea of guilty." The post-conviction court noted that the petitioner's trial attorney had said that, after the petitioner had listened to the audiotape of his preliminary hearing and discussed the matter with counsel, he "wanted to plead guilty." As to this claim, the court found that "[a] review of the petitioner's plea transcript reveals that he understood his rights and that he solely made the decision to plead guilty." This court also has reviewed the transcript of the petitioner's submission hearing, and we conclude that it supports the finding of the post-conviction court. In our review, we note that the petitioner was not a newcomer to the criminal justice system.

CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the post-conviction court's dismissal of the petition.

____

ALAN E. GLENN, JUDGE