



In the Missouri Court of Appeals Eastern District

DIVISION TWO

CHARLES M. RYAN,	)	No. ED103745
	)	
Movant/Appellant,	)	Appeal from the Circuit Court
	)	of St. Francois County
v.	)	
	)	
STATE OF MISSOURI,	)	Honorable Timothy W. Inman
	)	
Respondent/Respondent.	)	Filed: May 23, 2017

Introduction

Charles M. Ryan (Movant) appeals from the motion court's Judgment denying, without an evidentiary hearing, his amended Motion to Vacate, Set Aside or Correct Judgment and Sentence filed pursuant to Rule 24.035 (post-conviction motion).¹ We reverse and remand.

Factual and Procedural Background

The State charged Movant with the class A felony of manufacturing a controlled substance (methamphetamine) within 2,000 feet of an elementary school. On September 21, 2012, Movant pleaded guilty to an amended charge of the class B felony of manufacturing a controlled substance. Movant's plea was entered as part of a "group plea" with six other defendants.

¹ All rule references are to Mo. R. Crim. P. 2015.

Before questioning the defendants about their pleas, the plea court advised the seven defendants they would be placed under oath and then questioned to determine whether their pleas of guilty were being made knowingly, intelligently, and voluntarily. After swearing in the defendants as a group, the plea court explained the group plea procedure was being utilized to save the court time. The court explained it would address its questions and comments to the group and, “in order to keep the record straight,” the first defendant would respond and then the court would “move straight on down the line in order.” The plea court told the defendants they should stop the court, get their attorney’s attention, or “do whatever is necessary” if they got confused or did not understand something. None of the defendants or their counsel objected to the group plea procedure.

Upon questioning by the court, Movant stated he had sufficient opportunity to discuss his case with counsel, indicating they had spoken approximately 10 times for a total of about 4 hours. Movant stated his counsel had done all the things he requested of him, he was satisfied with the advice of counsel, and he had no complaints about counsel’s handling of his case.

After the court advised Movant of his trial rights and the range of punishment, the State set forth the terms of the plea bargain. In exchange for Movant’s guilty plea, the State recommended a 15-year sentence, suspended execution of sentence, with 5 years of probation to run consecutively to his sentence in another case.² Movant acknowledged these were the terms of the plea and stated he had no questions for the court. Upon questioning by the court, Movant indicated no one had made any promises

² At the time of his plea, Movant had been sentenced in another case to 15 years’ imprisonment, suspended execution of sentence, and placed on long-term drug treatment.

or agreements other than those stated on the record and no threats or pressure had been exerted against him to cause him to plead guilty. Movant then set forth the factual basis for the plea.

The plea court accepted Movant's plea as knowing and voluntary, sentenced him to 15 years' imprisonment to run consecutively to the sentence in his other case, suspended execution of the sentence, and placed Movant on 5 years' probation.

On April 20, 2015, Movant's probation was revoked and his 15-year sentence was ordered executed. On April 24, 2015, Movant was delivered to the Missouri Department of Corrections. On June 22, 2015, Movant filed his *pro se* post-conviction motion.

On October 26, 2015, appointed counsel timely filed an amended post-conviction motion alleging Movant's plea was not knowingly, intelligently, and voluntarily made due to plea counsel's ineffectiveness by informing Movant of a change in the State's plea offer only minutes before he was to enter a plea; by failing to meet with Movant and discuss the facts of his case before the plea; and by informing Movant he would likely receive a very harsh sentence if he did not accept the State's plea offer. Movant alleged he would present evidence he never personally spoke with counsel prior to day of the plea, counsel communicated to Movant by relaying messages via Movant's mother, and counsel advised Movant's mother he would receive a concurrent sentence if he pled guilty. Movant alleged he spoke with counsel for the first time in court minutes before the plea was to take place, at which time counsel advised him the State would only agree to a consecutive sentence and Movant would likely receive a "very

harsh” or the maximum sentence if he did not accept the offer. Movant alleged he was given only minutes to accept or reject the State’s plea offer and he had not substantively discussed the charges or the facts of the case with counsel and had not been given the chance to review any discovery. Movant alleged he felt pressured to plead guilty and but for counsel’s pressure, he would not have pled guilty but would have insisted on going to trial.

On November 6, 2015, the motion court³ entered its Judgment denying Movant relief without an evidentiary hearing. The motion court found Movant’s allegations were conclusively refuted by the record.⁴ This appeal follows.

Point on Appeal

On appeal, Movant argues the motion court erred in denying his post-conviction motion without an evidentiary hearing because he pled facts, not conclusions, which the record does not conclusively refute and entitle him to relief on his claim plea counsel was ineffective, in that counsel induced his involuntary, unintelligent, and unknowing guilty plea by misleading him and unreasonably pressuring him in the final minutes before his group plea.

Standard of Review

Our review of the denial of a Rule 24.035 motion is “limited to a determination of whether the findings and conclusions of the trial court are clearly erroneous.” Rule 24.035(k). “The motion court’s findings and conclusions are clearly erroneous only if,

³ The motion court judge was different than the plea court judge.

⁴ On appeal, Movant provided this Court with two supplemental transcripts, both a complete transcript of the plea hearing which included the testimony of the other six defendants and a redacted version of the plea proceeding containing just those portions related to Movant’s plea. The parties agree that the motion court was only presented with the redacted transcript for consideration.

after review of the record, the appellate court is left with the definite and firm impression that a mistake has been made.” Cooper v. State, 356 S.W.3d 148, 152 (Mo. banc 2011).

The movant has the burden of proving error by a preponderance of the evidence. Id.

Discussion

To be entitled to an evidentiary hearing, the movant must plead facts, not conclusions, which are not refuted by the record and if true would warrant relief, and the matters complained of must have resulted in prejudice to the movant. Id. “An evidentiary hearing may only be denied when the record conclusively shows that the movant is not entitled to relief.” Roberts v. State, 276 S.W.3d 833, 835 (Mo. banc 2009). “To justify the denial of an evidentiary hearing on an ineffective assistance of counsel claim, the record must be ‘specific enough to refute conclusively the movant’s allegation.’” Price v. State, 171 S.W.3d 154, 157 (Mo. App. E.D. 2005), quoting State v. Driver, 912 S.W.2d 52, 56 (Mo. banc 1995).

To be entitled to post-conviction relief based on a claim of ineffective assistance of counsel, a movant must demonstrate counsel’s performance did not conform to the degree of skill, care, and diligence of a reasonably competent attorney and he was prejudiced by counsel’s deficient performance. Worthington v. State, 166 S.W.3d 566, 572-73 (Mo. banc 2005), citing Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To satisfy the prejudice requirement in the context of a guilty plea, “the defendant must show that there is a reasonable probability that, but for counsel’s error, 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 (1985); Coates v. State, 939 S.W.2d 912, 914 (Mo. banc 1997). A defendant who pleads guilty waives all claims of

error except those affecting the voluntariness of the plea or the understanding with which the plea was made. Johnson v. State, 318 S.W.3d 313, 317 (Mo. App. E.D. 2010).

Here, the motion court denied Movant's claim, finding it was refuted by the record of the plea hearing. Movant contends his claim is not conclusively refuted by the record because his plea was taken as part of a "group plea" procedure, a procedure that may impact the voluntariness of a defendant's plea and lead a defendant to "parrot" the responses of the other defendants participating in the group plea.

There is no question that some of the responses given by Movant during the plea hearing contradict his post-conviction claims, specifically his claim that he was pressured to plead guilty. The State asserts Movant has waived any argument that the group plea procedure undermined the voluntariness of his guilty plea and affected the reliability of his responses during the plea proceeding by failing to specifically raise these arguments in his amended post-conviction motion. However, on appeal, this Court reviews the entire record in conducting its review and cannot turn a blind eye to the very procedure by which a defendant's guilty plea is taken when making its determination. Instead, this Court must view Movant's plea responses within the context in which his guilty plea was accepted in order to assess whether the record conclusively refutes Movant's post-conviction claim.

While group pleas have not been deemed automatically invalid or impermissible, Roberts v. State, 276 S.W.3d 833, 836 n. 5 (Mo. banc 2009), the courts have repeatedly cautioned against the use of them, Wright v. State, 411 S.W.3d 381, 387 (Mo. App. E.D. 2013). "A defendant pleading guilty to a felony and facing years in prison should be addressed individually throughout the plea proceeding to assure that the defendant

understands the proceeding and is not merely repeating the answers given by the multiple preceding defendants.” Id. at 388 (J. Richter, P.J., concurring). The practice of group pleas is incompatible with justice, due process, and fairness. The fact that a practice rife with potential due process problems is being utilized solely to “save time” for the plea court judge is inexcusable.

While the use of group pleas is not automatically invalid or impermissible, the procedure can impinge upon the voluntariness of a defendant’s plea and is likely to necessitate a hearing upon a defendant’s post-conviction motion challenging the voluntariness of said plea. Where, as here, the motion court judge differs from the plea court judge, an evidentiary hearing is indispensable in assessing whether a defendant’s guilty plea was voluntarily made.

The crux of Movant’s claim is that on the day of the plea, counsel informed him there had been a significant change to the terms of his plea and he would likely receive the maximum sentence if he did not accept the new plea deal within the next few minutes. Movant asserts the pressure exerted on him by counsel to plead guilty rendered his plea involuntary, unintelligent, and unknowing. In this case, Movant’s plea was accepted as part of a group plea before a different judge than the motion court judge. Notably, the motion court was also not presented with the entire plea proceeding transcript and relied upon a redacted version of the transcript in denying Movant’s motion without an evidentiary hearing. Because Movant’s plea was accepted as part of a group plea – a process that can impinge on the voluntariness of a guilty plea – Movant’s claim his plea was involuntarily induced by counsel’s unreasonable pressure to plead guilty, due to significant last-minute changes to his plea agreement coupled with the

prediction of a maximum sentence if he rejected the new agreement, is not conclusively refuted by the record before us.

Movant's post-conviction motion alleges facts which, if proven, could establish his guilty plea was not freely, voluntarily, and intelligently entered due to plea counsel's ineffective assistance. Movant is entitled to an evidentiary hearing and, on remand, the motion court is instructed to review the entire plea proceeding transcript in determining whether Movant's requested relief should be granted. Based on the foregoing, Movant's point on appeal is granted.

Conclusion

The judgment of the motion court is reversed and the cause remanded to the motion court to conduct an evidentiary hearing upon Movant's amended Rule 24.035 motion, with instructions to review the entire plea proceeding transcript.

A handwritten signature in dark ink, reading "Sherri B. Sullivan", written in a cursive style.

SHERRI B. SULLIVAN, P.J.

Roy L. Richter, J., and
Colleen Dolan, J., concur.