

Summary of SC93121, *Travis M. Stanley v. State of Missouri*

Appeal from the Perry County circuit court, Judge Benjamin F. Lewis

Argued and submitted September 12, 2013; opinion issued February 4, 2014

Attorneys: Stanley was represented by Scott Thompson of the public defender's office in St. Louis, (314) 340-7662, and the state was represented by Karen L. Kramer of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man who pleaded guilty and then received a sentence longer than the one recommended by the state appeals the circuit court's denial, without an evidentiary hearing, of post-conviction relief. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the judgment. The man's first post-conviction counsel did not abandon him, his second post-conviction counsel filed a second amended motion for relief out of time, and this Court, therefore, only can consider the claims raised in the man's first amended motion for relief. The circuit court did not err in not holding a hearing regarding those claims because the man failed to plead sufficient facts establishing prejudice for any of his claims. The court also did not clearly err in overruling the man's motion for relief. The record and transcript of the plea colloquy conclusively refute all of his claims, and any allegation that his plea was not knowing, voluntary and intelligent fails.

Facts: The state filed two charges against Travis Stanley for failing to register as a sex offender. The maximum punishment for each offense is four years in prison – or eight years total. Stanley and the state reached a plea agreement in which Stanley agreed to plead guilty to the two charges in exchange for the prosecutor promising to recommend a lesser sentence of three years in prison for each charge, to be served concurrently (at the same time, for a total of three years in prison). Stanley signed a written petition outlining the plea agreement and his understanding that it was not binding on the circuit court. At a plea hearing, the court engaged in an oral colloquy tracking the language required by the applicable rule and revealing the depth of Stanley's understanding regarding the plea agreement and the fact that he was pleading guilty knowingly, voluntarily and intelligently. The court accepted Stanley's guilty pleas and, after receiving a sentencing assessment report, held a later sentencing hearing at which it sentenced Stanley to the maximum punishment of two four-year prison sentences, to be served consecutively (for a total of eight years in prison). Neither Stanley nor his counsel objected, and the court entered judgment. In April 2010, Stanley filed a timely motion for post-conviction relief. The circuit court appointed the public defender's office as counsel. Counsel filed a timely amended petition on Stanley's behalf in September 2010. That counsel later withdrew from the case. A second assistant public defender entered his appearance in April 2011 and, in July 2011, filed a second amended petition on Stanley's behalf. The circuit court overruled this petition without an evidentiary hearing, finding the transcript of the plea colloquy refuted Stanley's claims regarding the effectiveness of his counsel and actions the circuit court took during sentencing. Stanley appeals.

AFFIRMED.

Court en banc holds: (1) Arguments raised only in Stanley's second amended motion are time-barred. The time limits for filing a post-conviction motion are mandatory, and the circuit court is compelled to dismiss late-filed motions. Arguments raised for the first time in a second amended motion, filed after the time limit set out in Rule 24.035(g), are barred from consideration. That rule requires counsel to file an amended motion within 60 days of the earlier of the date a complete transcript of the plea and sentencing has been filed and counsel either is appointed or enters an appearance on the movant's behalf. The effective date of appointment of counsel is the date on which the public defender's office is designated rather than the date of counsel's entry of appearance. This date controls regardless of whether the court later appoints new counsel or allows other counsel to enter an appearance. Here, the deadline for filing an amended motion passed long before Stanley's second post-conviction counsel entered the case. Counsel filed the second amended motion out of time, therefore, and this Court will not consider it unless Stanley can show his first post-conviction counsel abandoned him, which the record demonstrates did not occur. This first counsel filed an amended motion, discharging counsel's duties under Rule 24.035(e), and alleged claims and facts beyond those raised by Stanley in his pro se motion, showing counsel made some effort to ascertain whether sufficient facts supporting the claims were presented in the original motion and whether Stanley had included all claims known to him as a basis for attacking the judgment and sentence. As such, this Court must confine its review to arguments raised in Stanley's first amended motion.

(2) The circuit court did not clearly err in denying a hearing regarding Stanley's claims. The claims he raises are cognizable (legally capable of being heard and determined) in a Rule 24.035 motion only to the extent they challenge the validity of his guilty pleas by showing he did not enter into the pleas knowingly, voluntarily and intelligently. To show prejudice when there is alleged ineffective assistance of counsel arising only from the accepted guilty plea, the movant must prove that, but for the alleged errors, he would not have pleaded guilty and would have demanded a trial. Stanley's motion, however, fails to plead sufficient facts establishing prejudice for any of his claims. As such, he is not entitled to an evidentiary hearing regarding any of his claims. Even had he stated sufficient facts to plead prejudice in his first amended motion, the record and transcript of the plea colloquy conclusively refute all of his claims, and any allegation that his plea was not knowing, voluntary and intelligent fails.

(3) The circuit court did not clearly err in denying Stanley's claims for post-conviction relief. Because the plea agreement was a nonbinding agreement, the court was not required to inform the parties it was rejecting their plea agreement and to give Stanley the opportunity to withdraw his plea. The written plea petition and plea colloquy refute Stanley's claims, demonstrating that Stanley understood the agreement was for the prosecutor's recommendation of a lower sentence and was not binding on the court. The court told Stanley it could impose the maximum eight-year sentence if he pleaded guilty, and Stanley unequivocally stated he still wished to do so. As such, the court did not "reject" the plea agreement when it deviated from the prosecutor's recommendation. The agreement's terms were performed and its obligations discharged when the prosecutor made the promised recommendation of a particular sentence and Stanley pleaded guilty. A prior case decision that a court must allow a defendant to withdraw a guilty plea after announcing its sentencing decision was superseded by the current version of the applicable rule in the context of a nonbinding plea agreement. For similar reasons, Stanley's claims of

ineffective assistance of counsel also fail. The plea colloquy – during which Stanley told the court he was satisfied with his counsel’s assistance – makes clear that Stanley entered his guilty pleas knowingly, voluntarily and intelligently.