



In the Missouri Court of Appeals
Eastern District
DIVISION THREE

MYRON PHILLIPS WILLIAMS,	)	No. ED108531
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Michael F. Stelzer
STATE OF MISSOURI,	)	
	)	
Respondent.	)	FILED: December 8, 2020

Introduction

Myron Phillips Williams (“Williams”) appeals from the judgment of the motion court denying his Rule 24.035¹ motion without an evidentiary hearing. In his sole point on appeal, Williams alleges the motion court clearly erred in denying his Rule 24.035 motion without an evidentiary hearing because he received ineffective assistance of counsel when he entered his guilty plea. Williams contends his plea counsel failed to properly investigate and challenge the plea court’s jurisdiction to revoke his probation during a probation revocation hearing conducted in a separate case immediately prior to Williams entering his guilty plea in the present case. Because claims of ineffective assistance of counsel in probation revocation hearings are not cognizable in Rule 24.035 motions and because Williams does not allege that he would not have pleaded guilty but for plea counsel’s ineffective assistance, the motion court did not err in

¹ All Rule references are to Mo. R. Crim. P. (2019).

denying Williams's motion without an evidentiary hearing. Accordingly, the judgment of the motion court is affirmed.

Factual and Procedural History

In 2011, Williams received a twenty-year suspended sentence and was placed on probation after pleading guilty to a charge of second-degree robbery in 2009 (the "2009 Case"). In 2018, Williams was indicted on one count of second-degree burglary and one count of stealing after police found Williams in a store after it was closed with cigarettes and a cigarillo from the store in his possession (the "2018 Case"). Williams opted to plead guilty in the 2018 Case, and a plea hearing was scheduled.

The plea court conducted a probation revocation hearing related to the 2009 Case immediately prior to conducting the plea hearing for the 2018 Case. Plea counsel represented Williams in the probation revocation hearing as well as the plea hearing. During the probation revocation hearing, Williams admitted to a violation of laws, namely, the burglary underlying the 2018 Case. The plea court found that the violation was substantial, unjustified, and unexcused. The plea court revoked Williams's probation and executed his sentence of twenty years, with credit for time served. Williams subsequently stated that he had no complaints about plea counsel's representation in the 2009 Case.

During the plea hearing, Williams entered an open guilty plea. Williams testified that he was satisfied with plea counsel's representation in the 2018 Case. The plea court accepted Williams's guilty plea and sentenced him to five years to be served concurrently with the sentence for the 2009 Case. Williams again testified that he had no complaints about plea counsel's performance.

In January 2019, Williams filed an amended Rule 24.035 motion for post-conviction relief challenging his guilty plea in the 2018 Case. The motion's sole ground for relief alleged

that plea counsel was ineffective for advising Williams to plead guilty in the 2018 Case without first investigating and objecting to the court's jurisdiction in the 2009 Case. In particular, the motion claimed that "[p]lea counsel failed to investigate whether [Williams's] probation had expired and failed to object to the court's jurisdiction to revoke his probation." Williams alleged in his motion that he was prejudiced by counsel's ineffective assistance because "his probation was revoked and he was sentenced to twenty years' imprisonment and then sentenced to five years' imprisonment on the [2018 Case] to run concurrent with the revocation." Williams averred that, but for plea counsel's ineffective assistance, he "would be serving a sentence for only the 2018 [Case]." Williams requested an evidentiary hearing.

The motion court denied Williams's amended motion without an evidentiary hearing, finding that Williams had not alleged facts that would entitle him to relief if true. Specifically, the motion court found that Williams's claim alleging ineffectiveness of counsel at the probation revocation hearing was not cognizable in a Rule 24.035 motion. Further, the motion court determined that Williams did not allege that he would not have pleaded guilty but for plea counsel's alleged ineffectiveness and that Williams in fact voluntarily entered his guilty plea following the revocation of his probation. Williams now appeals.

Point on Appeal

In his sole point on appeal, Williams alleges the motion court clearly erred in denying his Rule 24.035 motion without an evidentiary hearing because Williams pleaded facts showing that plea counsel was ineffective in advising Williams to plead guilty in the 2018 Case without first investigating whether the plea court had jurisdiction to revoke Williams's probation in the 2009 Case.

Standard of Review

We review the denial of a Rule 24.035 motion for clear error. Rule 24.035(k); Suber v. State, 516 S.W.3d 386, 388 (Mo. App. E.D. 2017) (internal citation omitted). “Findings and conclusions are clearly erroneous if, after a review of the entire record, we are left with the definite and firm impression that a mistake has been made.” Suber, 516 S.W.3d at 388 (internal quotation omitted). “[W]e view the record in the light most favorable to the motion court’s findings and conclusions.” Mitchell v. State, 510 S.W.3d 366, 370 (Mo. App. E.D. 2017) (internal citation omitted).

Discussion

A motion court properly denies a movant’s request for an evidentiary hearing unless: “(1) the movant pleads facts, not conclusions, which if true would warrant relief; (2) the facts alleged are not refuted by the record; and (3) the matters at issue resulted in prejudice to the movant.” Suber, 516 S.W.3d at 588 (citing State v. Coates, 939 S.W.2d 912, 914 (Mo. banc 1997)) (additional citation omitted).

To prevail on a claim of ineffective assistance of counsel, “a movant must show by a preponderance of the evidence (1) that his attorney failed to exercise the customary skill and diligence that a reasonably competent attorney would perform under similar circumstances, and (2) that he was prejudiced thereby.” Whitehead v. State, 481 S.W.3d 116, 122 (Mo. App. E.D. 2016) (citing Sanders v. State, 738 S.W.2d 856, 857 (Mo. banc 1987)); Strickland v. Washington, 466 U.S. 668, 687 (1984). A movant who pleaded guilty can only establish prejudice by showing the movant would have proceeded to trial rather than pleading guilty but for counsel’s ineffective assistance. Id. at 122–23 (internal citations omitted); Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Here, Williams’s point on appeal and his underlying Rule 24.035 motion suffer from at least two fundamental flaws. To the extent we construe Williams’s claim as an allegation that counsel provided ineffective assistance in his probation revocation hearing on the 2009 case, it is well established that claims of ineffective assistance in probation revocation hearings are not cognizable in Rule 24.035 motions. Snyder v. State, 288 S.W.3d 301, 303 (Mo. App. E.D. 2009) (internal citation omitted). Instead, the proper remedy is habeas corpus. Id. Williams attempts to overcome this barrier by arguing that he challenged the jurisdiction of the court that revoked his probation, and that claims asserting lack of jurisdiction are cognizable. See Suber, 516 S.W.3d at 388–91 (internal citations omitted) (rejecting a movant’s challenge to the probation revocation court’s jurisdiction on the merits rather than on the ground that it was not cognizable). Williams is correct in noting that challenges to the jurisdiction of the court conducting the probation revocation hearing are cognizable. See id. His argument nevertheless is unavailing because his motion does not directly challenge the court’s jurisdiction, but instead asserts a claim that counsel was ineffective for failing to investigate whether the court retained jurisdiction over the probation revocation hearing. See Stelljes v. State, 72 S.W.3d 196, 199 (Mo. App. W.D. 2002) (internal citations omitted) (expressly differentiating between claims that the probation revocation court lacked jurisdiction and that counsel was ineffective at the probation revocation hearing). Any claim that plea counsel was ineffective in representing Williams in the probation revocation hearing is not cognizable on appeal. See Snyder, 288 S.W.3d at 303 (internal citation omitted).

Reading Williams’s claim broadly, we reasonably may construe Williams’s claim of counsel’s failure to investigate the underlying jurisdiction of the probation revocation court to be cognizable in a challenge to the 2018 guilty plea under the broad umbrella of a defense counsel’s

failure to investigate. Even reading the motion broadly to allege ineffective assistance of plea counsel in Williams's 2018 guilty plea, Williams's motion nevertheless fails because he did not plead the requisite prejudice. See Whitehead, 481 S.W.3d at 122–23. Williams maintains his counsel's failure to investigate the court's jurisdiction in the probation revocation matter caused him to be sentenced to a total of twenty years in the two cases. While Williams acknowledges that the court ordered his five-year sentence in the 2018 Case to be served concurrent with the twenty-year sentence imposed in the probation revocation hearing, Williams argues that but for plea counsel's ineffective assistance, he "would be serving a sentence for only the 2018 [Case]." Notably absent from Williams's motion is any suggestion that Williams would not have pleaded guilty in the 2018 case but for counsel's failure to investigate. Accordingly, Williams's motion lacks the required allegation that he only pleaded guilty due to the ineffective assistance of plea counsel ***and otherwise would have gone to trial on the 2018 Case***. See id. Indeed, Williams ultimately alleges that plea counsel should have challenged the probation revocation court's jurisdiction, the challenge should have succeeded, and then ***Williams would have pleaded guilty***. See id. Thus, not only does Williams fail to meet the standard for prejudice that would entitle him to relief under Rule 24.035, but he in fact pleads exactly the opposite of what is required. See id.; Suber, 516 S.W.3d at 388.

Any attack on counsel's performance in the probation revocation hearing is not cognizable in a Rule 24.035 motion. See Snyder, 288 S.W.3d at 303. Because Williams did not plead the required prejudice resulting from the alleged ineffective assistance of plea counsel when challenging the sentence imposed pursuant to his 2018 guilty plea, Williams was not entitled to relief or to an evidentiary hearing on his motion. See Suber, 516 S.W.3d at 388; Whitehead, 481 S.W.3d at 122–23; Snyder, 288 S.W.3d at 303. Accordingly, the motion court

did not clearly err in denying Williams's motion without an evidentiary hearing. See Suber, 516 S.W.3d at 388. The point is denied.

Conclusion

The judgment of the motion court is affirmed.


KURT S. ODENWALD, Judge

Angela T. Quigless, P.J., concurs.
James M. Dowd, J., concurs.