



Missouri Court of Appeals

Southern District

Division One

CORY D. JONES,	)	
	)	
Movant-Appellant,	)	
	)	
v.	)	No. SD36913
	)	Filed: November 23, 2021
STATE OF MISSOURI,	)	
	)	
Respondent-Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF WAYNE COUNTY

Honorable Megan K. Seay, Circuit Judge

AFFIRMED

Cory Jones (Jones) appeals from an order denying his amended Rule 24.035 motion to set aside his conviction for first-degree murder, for which he received a sentence of life imprisonment without the possibility of parole. *See* § 565.020.¹ Because the motion court's decision to deny relief after an evidentiary hearing was not clearly erroneous, we affirm.

Jones bore the burden of proving the grounds asserted in his post-conviction motion by a preponderance of the evidence. Rule 24.035(i); *Gales v. State*, 533 S.W.3d 796, 799

¹ All rule references are to Missouri Court Rules (2018). All statutory references are to RSMo (2000).

(Mo. App. 2017). Appellate review of an order denying a motion for post-conviction relief is limited to a determination of whether the court’s findings of fact and conclusions of law are “clearly erroneous.” Rule 24.035(k); **Booker v. State**, 552 S.W.3d 522, 526 (Mo. banc 2018). “The motion court’s findings and conclusions are clearly erroneous only if,” after review of the record, this Court is “left with a definite and firm impression that a mistake was made.” **Ross v. State**, 335 S.W.3d 479, 480 (Mo. banc 2011); **Booker**, 552 S.W.3d at 526. On review, the motion court’s findings are “presumptively correct.” **Wilson v. State**, 813 S.W.2d 833, 835 (Mo. banc 1991); **Gales**, 533 S.W.3d at 799. The motion court was free to believe or disbelieve any evidence, whether contradicted or undisputed, including Jones’ testimony. **Vanzandt v. State**, 212 S.W.3d 228, 231 (Mo. App. 2007). “This Court defers to the motion court on matters of credibility.” *Id.*; see **Stacker v. State**, 357 S.W.3d 300, 303 (Mo. App. 2012). The following summary of facts has been prepared in accordance with these principles.

Jones was charged by a four-count information with the following offenses occurring in May 2016: Count 1 – the class A felony of first-degree murder, which alleged that Jones, after deliberation, knowingly caused the death of his wife (Victim); Count 2 – the unclassified felony of armed criminal action for the alleged use of a deadly weapon in the murder; and Counts 3 and 4 – endangering the welfare of a child when Jones knowingly shot Victim in close proximity to two children. Count 3 involved his 12-year-old daughter (Daughter), and Count 4 involved a one-year-old infant whom Daughter was babysitting.

Thereafter, a plea agreement was reached. In exchange for a guilty plea on Count 1, the State agreed to dismiss the remaining three counts. The State also waived its intent to seek the death penalty.

In September 2017, a hearing was held at which Jones pled guilty to the charge of first-degree murder. Jones testified to the plea court that, *inter alia*: (1) he understood the nature of the charge and the range of punishment; (2) he was not under the influence of alcohol, any controlled substance, or any medication at the time of the plea; (3) he understood the constitutional rights associated with the right to a jury trial and appeal that he was waiving; and (4) he was pleading guilty because he was “in fact, guilty” and “committed the offense charged[.]”

In his own words, Jones testified: “Me and my wife got into an argument one afternoon. I went upstairs, come back downstairs, and I ended up shooting her.” Jones confirmed that he went upstairs to obtain the gun for the purpose of shooting Victim and did not dispute that Victim died as a result of that gunshot. The plea court asked plea counsel whether he had “any reason to believe [Jones was] suffering from any mental illness, disease, defects or delusions of any kind[.]” and counsel responded: “No, Your Honor.” The court found that Jones’ guilty plea was “made freely, voluntarily and intelligently, with full understanding of the charge and consequence of a plea and with full understanding of his rights attending a trial, and the effect of a plea of guilty on those rights.” The court accepted Jones’ plea and sentenced him to life in prison without the possibility of parole.

In February 2018, Jones timely filed an original Rule 24.035 motion for post-conviction relief. Appointed counsel filed an amended motion.² In the amended motion, counsel alleged, *inter alia*, that plea counsel was ineffective for “failing to investigate and

² This Court has independently verified the timeliness of Jones’ original and amended post-conviction motions. See **Moore v. State**, 458 S.W.3d 822, 825-26 (Mo. banc 2015); **Dorris v. State**, 360 S.W.3d 260, 268 (Mo. banc 2012).

obtain evidence of [Jones'] history of mental illness[.]" The amended motion also alleged that counsel was aware that Jones: (1) attempted suicide after shooting Victim by shooting himself under the chin; (2) was intoxicated at the time of the shooting and had a "history of alcohol abuse"; (3) had a "history of hospitalizations and treatment for alcoholism and mental illness"; and (4) was prescribed "an antipsychotic" medication and a medication used to treat "depression and its related insomnia and anxiety disorders" during his detention for the underlying charges. Lastly, the amended motion alleged that but for plea counsel's failure to investigate Jones' mental illness, Jones would not have pled guilty and insisted on going to trial "if his mental health and/or history of alcoholism would have been investigated and his records obtained so they would [or] could be available for a jury trial and sentencing[.]"

In June 2020, the motion court held an evidentiary hearing. Three witnesses testified: Jones' plea counsel, Wayne Williams (Williams); a psychologist, Dr. Richard Scott (Dr. Scott); and Jones.

Williams gave the following testimony. He spoke with Jones on "at least four or five occasions that's documented" and "three or four" other times. During these interactions with Jones, Williams "never once thought there [were] any issues whatsoever with his competency." Williams testified that Jones was "very responsive [and] very articulate." Jones "was able to converse with us during the preliminary hearing about our questions ... and he had relevant follow-ups." Williams also spoke with Jones about using the defense of "not guilty by reason of insanity" (NGRI), and Jones told him "on several occasions he did not want to pursue a mental health defense." Jones was also unable to give information about his previous medical providers. According to Williams, Jones wanted to plead guilty to prevent the possibility of spending "an indefinite period of time"

in a mental health facility. More importantly, Jones wanted to plead guilty to protect Daughter from the “trauma of testifying” at a jury trial.

Dr. Scott testified as Jones’ mental health expert, but the doctor’s testimony was not helpful to Jones. Dr. Scott “looked at how [Jones] was diagnosed by the persons treating him at the time as well as what was reported about his conduct ... before the crime in the hours leading up to it and the level of intoxication[.]” Dr. Scott “came to the conclusion that these conditions did not rise to the level of a mental disease or defect.” The doctor noted that Jones was “highly intoxicated at the time of the crime” but “intoxication cannot be a mental disease or defect per the statute.” Had Dr. Scott been called at sentencing, he would have had “pluses and minuses” to contribute.

Jones could not remember if he had told Williams he had a prior mental health history. When Jones was asked if he would have been able to articulate such information to his attorney, he responded: “I would like to think I would have known where and what doctor I had seen.” Jones also admitted to previously lying under oath.

Thereafter, the motion court issued findings of fact and conclusions of law denying post-conviction relief. The judge concluded that counsel “does not have a duty to initiate an investigation of a mental condition of the accused in the absence of some suggestion of current mental instability.” The court found that Williams had “no indication” of a need for a mental evaluation of Jones, as Jones “appeared fully competent and [Jones] expressed no desire to utilize a NGRI defense.” Further, Williams had a “justifiable and strategic reason” for Jones to plead guilty, “both to protect [Daughter] from having to testify and to prevent the possibility of spending an indefinite period of time in a mental health facility.” The court found Williams’ testimony was further supported by Dr. Scott, who testified that a finding of mental disease or defect was unlikely and that his testimony about mental

illness at sentencing “would have had both ‘pluses and minuses.’” The motion court found Williams’ “testimony more credible than that of [Jones].” The court ultimately determined that Jones’ claim “does not rise to the level of deficient performance that would have prejudiced the defense.” This appeal followed.

Jones contends the motion court clearly erred in denying post-conviction relief because he received ineffective assistance of counsel. Since Jones pled guilty, a claim of ineffective assistance of counsel is immaterial except to the extent that it infringed upon the voluntariness and knowledge with which the guilty plea was made. *Booker*, 552 S.W.3d at 531; *Worthington v. State*, 166 S.W.3d 566, 573 (Mo. banc 2005). To prevail on a claim of ineffective assistance of counsel, Jones had to prove that plea counsel failed to exercise the customary skill and diligence that a reasonably competent attorney would perform under similar circumstances and that Jones was thereby prejudiced. *Booker*, 552 S.W.3d at 531; *see Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Under *Strickland*, to satisfy the first, performance prong when a movant claims counsel should not have allowed the movant to enter a guilty plea without investigating the movant’s mental condition, the movant must show “a factual basis indicating a questionable mental condition” that should have caused the attorney to initiate an independent investigation of the movant’s mental state. *State v. Carter*, 955 S.W.2d 548, 555 (Mo. banc 1997); *Cooper v. State*, 621 S.W.3d 624, 632 (Mo. App. 2021); *Washington v. State*, 598 S.W.3d 656, 667-68 (Mo. App. 2020); *see also Henderson v. State*, 977 S.W.2d 508, 511 (Mo. App. 1998) (“[i]n the absence of some suggestion of mental instability, there is no duty on counsel to initiate an investigation of the mental condition of an accused”); *see, e.g., Gooch v. State*, 310 S.W.3d 275, 280 (Mo. App. 2010); *Azbell v. State*, 144 S.W.3d 863, 873 (Mo. App. 2004). To satisfy the prejudice prong when a

movant claims counsel should not have allowed the movant to enter a guilty plea without investigating the movant's mental condition, "the movant must show a reasonable probability [he or she] was not competent at the time in question." *Cooper*, 621 S.W.3d at 632; *Washington*, 598 S.W.3d at 668. "A defendant is presumed competent and bears the burden of showing a lack of competence." *Washington*, 598 S.W.3d at 667. "Appellate review of the reasonableness of trial counsel's conduct is viewed from counsel's perspective at the time and not from hindsight." *Cooper*, 621 S.W.3d at 632; *see Henderson*, 977 S.W.2d at 511.

Jones argues that plea counsel was ineffective for "failing to investigate Mr. Jones' mental health issues where a factual basis indicated Mr. Jones' questionable mental condition[.]" According to Jones, he "was prejudiced by his counsel's deficient performance because there was a reasonable probability he was incompetent at the time of the plea hearing." We disagree.

Jones failed to satisfy the first, performance prong under *Strickland*. *See Cooper*, 621 S.W.3d at 635. Specifically, Jones failed to carry his burden to show a factual basis indicating a questionable mental condition that should have caused Williams to consider Jones' ability to proceed before allowing Jones to enter a guilty plea. *See id.* at 635. "The test for competency is whether the accused has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as a factual understanding of the proceedings against him." *Cooper*, 621 S.W.3d at 631 (internal quotation marks and citations omitted); *see Henderson*, 977 S.W.2d at 511. Here, the motion court believed Williams' testimony that: (1) there was no indication of mental instability; (2) Jones had the ability to consult with counsel, and to understand and participate in the proceedings against him; and (3) Jones wanted to plead guilty both to

protect Daughter from having to testify and to prevent the possibility of spending an indefinite period of time in a mental health facility. Williams' testimony is supported by Dr. Scott's opinion that Jones did not suffer from a mental defect at the time of the plea. The motion court was free to believe or disbelieve any evidence, whether contradicted or undisputed, and this Court defers to the credibility determinations of the motion court. *Stacker*, 357 S.W.3d at 303; *Gold v. State*, 341 S.W.3d 177, 180-81 (Mo. App. 2011). Because Jones failed in his burden to show a factual basis indicating a questionable mental condition that should have caused Williams to further investigate, Jones failed to show deficient performance by Williams as required under the first prong of *Strickland*. See *Cooper*, 621 S.W.3d at 635; *Cook v. State*, 193 S.W.3d 378, 387 (Mo. App. 2006); see also *Henderson*, 977 S.W.2d at 511. Accordingly, the motion court did not clearly err in denying Jones' claim that he received ineffective assistance from Williams when Williams failed to investigate Jones' mental health issues. Jones' point is denied.

The order denying Jones' amended Rule 24.035 motion is affirmed.

JEFFREY W. BATES, J. – OPINION AUTHOR

WILLIAM W. FRANCIS, JR., P.J. – CONCUR

JACK A. L. GOODMAN, J. – CONCUR