Missouri Court of Appeals
Southern District

In Division

AUDRA JOYCE, Petitioner-Movant, v. STATE OF MISSOURI, Respondent-Respondent.	No. SD38815 **Filed: December 9, 2025**

APPEAL FROM THE CIRCUIT COURT OF BARTON COUNTY

Honorable David R. Munton, Judge

AFFIRMED

Audra Joyce ("Movant") appeals the motion court's decision denying her amended motion for post-conviction relief under Rule 24.035.[1] Movant raises three points on appeal, claiming she received ineffective assistance of counsel because: (1) Movant's attorney misadvised her on the sentence she would receive; (2) Movant did not enter her guilty plea knowingly, voluntarily and intelligently, and (3) Movant's attorney failed to

[1] Unless otherwise noted, all rule references are to Missouri Court Rules (2024).

call Movant's mother ("Mother") as a witness at sentencing. After reviewing the record and finding no error, we affirm.

Facts and Procedural History

Movant entered an open plea[2] to one count of first-degree drug trafficking (§579.065), one count of possession of a controlled substance (§579.015), and one count of unlawful use of a weapon (§571.030).[3]

At the guilty plea hearing, Movant testified she was entering her pleas voluntarily and understood the consequences and the full potential range of sentencing. She also testified no threats or promises were made to get her to enter her pleas. Movant testified she was satisfied with the services of her attorney and her attorney did everything she asked him to do. As part of her plea, Movant also submitted a written plea form, signed by her and acknowledged by her counsel. The written plea form set forth the full range of potential punishment for each of the counts she was facing, confirmed that there was no plea deal in place for any particular sentence and stated that she was satisfied with the services of her attorney.

On August 11, 2022, a sentencing hearing was held. Movant's attorney presented mitigating evidence in the form of letters from Movant's therapist and Movant's previous landlord, who was a retired state legislator. Both letters speak highly of Movant's

[2] Movant entered an Alford plea as to the trafficking charge, and admitted guilt as to the other charges. There was no plea agreement with the State as to any of the charges.

[3] Unless otherwise noted, all statutory references are to RSMo 2016, as amended through April 30, 2024.

character and the progress she has made since the conduct that lead to the charges against her. Movant's attorney did not call Mother as a witness at sentencing. The trial court ultimately sentenced Movant to 25 years on Count I, seven years on Count II, and four years on Count III, all to be served concurrently with each other.

Movant's *pro se* Rule 24.035 motion was received by the motion court on February 9, 2023, which was 182 days after her sentence was entered on August 11, 2022. At the hearing on Movant's Amended Rule 24.035 motion, Movant testified that she signed her *pro se* motion in front of a notary on February 3, 2023 and placed in it the mail at the correctional center that day. Based on this evidence, the motion court found that Movant's *pro se* motion was mailed prior to the 180-day deadline dictated by Rule 24.035(b) and found the *pro se* motion to be timely filed. The State concedes, and we agree, that Movant's subsequent Amended Rule 24.035 motion was then timely filed on September 14, 2023.

Movant's Amended Rule 24.035 motion requested an evidentiary hearing and asserted that she received ineffective assistance of counsel. At the hearing, Movant testified she had no complaints about her attorney at the time of sentencing. Movant's attorney testified he advised her of the full range of sentencing before she entered her plea. He further testified his goal was to get Movant on probation, but he estimated the sentence would be about 10 to 15 years.

Movant's attorney further testified he considered calling the witnesses who submitted written letters of support live, but could not remember why he did not call them to the stand. He also said he remembered the "examples were good" and he thought

"they all said the same thing." Mother also testified at the Rule 24.035 hearing and stated Movant's attorney never spoke to her about testifying at the sentencing hearing. The motion court denied Movant's claims of ineffective assistance of counsel and found that she entered her plea knowingly, voluntarily and intelligently. This appeal followed.

Standard of Review

This Court reviews an order sustaining or overruling a motion for post-conviction relief following a guilty plea to determine whether the motion court's findings of fact and conclusions of law are clearly erroneous under Rule 24.035. ***Burnett v. State***, 681 S.W.3d 702, 706 (Mo. App. S.D. 2023). The motion court's judgment is clearly erroneous "only if we are left with a definite and firm impression a mistake was made after reviewing the entire record." ***Id***. (citing ***Ross v. State***, 335 S.W.3d 479, 480 (Mo. banc 2011)). The motion court's findings are presumed to be correct. ***Id***. (citing ***Johnson v. State***, 664 S.W.3d 757, 762 (Mo. App. S.D. 2023)).

To establish an ineffective assistance of counsel claim, the movant must show by a preponderance of the evidence: "(1) his or her counsel failed to exercise the customary skill and diligence a reasonably competent counsel would perform under similar circumstances; and (2) the attorney's failure prejudiced movant." ***Burnett***, 681 S.W.3d at 707 (citing ***Strickland v. Washington***, 466 U.S. 668, 687 (1984)). The movant must establish both the performance and the prejudice prongs to establish counsel's assistance was ineffective. ***Id***. If the movant fails to establish either the performance prong or the prejudice prong, we will not consider the other prong. ***Id***.

Analysis

Point I

In Movant's first point on appeal, she claims her attorney misadvised her when he allegedly told her she would be sentenced to 120 days shock incarceration and induced her to plead guilty.

"A motion court does not clearly err in denying a claim that the movant was misled about [her] sentence where the attorney testifies at an evidentiary hearing the alleged misadvice was never given." ***Moreland v. State***, 659 S.W.3d 671, 679 (Mo. App. S.D. 2023) (quoting ***Carden v. State***, 404 S.W.3d 386, 389 (Mo. App. S.D. 2013)). Movant's trial attorney testified he and Movant "talked about she could have gotten 30 years, which was the maximum," but that his goal was to try to get her on probation. Further, Movant affirmed during her guilty plea hearing that no threats or promises had been made to her in order to get her to enter a plea, that she was entering each of her pleas voluntarily and with an understanding of the consequences of her pleas, and that her attorney explained to her the full range of punishment for each charge. Further, Movant submitted to the trial court a written guilty plea form that reiterated all of these same points. Movant affirmed that she went over the form with her attorney, read all the questions and answers, that everything in the form was true and correct and that she had signed it. On this record, the motion court's finding that Movant's plea attorney did not make her any promises or misadvise her was not clearly erroneous. Point I is denied.

Point II

In Movant's second point on appeal, she claims she did not enter her guilty pleas knowingly, voluntarily, and intelligently because she did not understand the consequences of the guilty pleas. A guilty plea is constitutionally valid only if the plea is entered into voluntarily and intelligently. ***Moreland***, 659 S.W.3d at 678 (citing ***Booker v. State***, 552 S.W.3d 522, 527 (Mo. banc 2018)). "A disappointed expectation of a lesser sentence does not make a guilty plea involuntary." ***Id.*** at 679 (quoting ***Carden***, 404 S.W.3d at 389). However, a defendant's mistaken beliefs about sentencing may affect their ability to knowingly plead guilty if: "the mistake is reasonable, and 2) the mistake is based upon a positive representation upon which movant is entitled to rely." ***Carden***, 404 S.W.3d at 389 (quoting ***Willoughby v. State***, 81 S.W.3d 676, 679-80 (Mo. App. S.D. 2002)). We review the record of the guilty plea to determine whether a movant's mistaken belief about their sentence is reasonable. ***Willoughby***, 81 S.W.3d at 680. (citing ***McCall v. State***, 771 S.W.2d 357, 359 (Mo. App. E.D. 1989)).

Again, the record here does not support Movant's assertions. Movant affirmatively stated at the guilty plea hearing that she was voluntarily entering these guilty pleas and understood the consequences. Movant further testified no promises or threats had been made towards her to get her to plead guilty. Movant also affirmed that she understood the full range of punishment and the consequences of pleading guilty. Movant executed a written guilty plea form which reiterated and acknowledged all of these same facts. Further, Movant's attorney testified he advised her of the whole range of punishment. Under these circumstances, any alleged misunderstanding that Movant

may have held about her plea would not have been reasonable. Therefore, the motion court's finding that Movant plead guilty knowingly, voluntarily, and intelligently and understood the consequences of her pleas was not clearly erroneous. Point II is denied.

Point III

In Movant's third point on appeal, she alleges her attorney was ineffective because he failed to call Mother as a witness at the sentencing hearing to testify to the challenges Movant faced in her life in the year before her sentencing. Witness selection is a matter of trial strategy and "virtually unchallengeable" when claiming ineffective assistance of counsel. ***Beck v. State***, 637 S.W.3d 545, 552 (Mo. App. W.D. 2021) (citing ***Jindra v. State***, 580 S.W.3d 635, 641 (Mo. App. W.D. 2019)). However, a movant can succeed on an ineffective assistance of counsel claim for not calling a witness if they can establish: "(1) trial counsel knew or should have known of the existence of the witness; (2) the witness could be located through reasonable investigation; (3) the witness would testify; and (4) the witness's testimony would have produced a viable defense." ***Id***. (quoting ***Davis v. State***, 486 S.W.3d 898, 909 (Mo. banc 2016)).

Movant's attorney testified his hope was that they "could convince the [c]ourt that she was not broken and did not need a trip to prison and that she was amenable to probation[.]" "Reasonable choices of trial strategy, no matter how ill-fated they appear in hindsight, cannot serve as a basis for a claim of ineffective assistance." ***Martin v. State***, 655 S.W.3d 195, 201 (Mo. App. W.D. 2022) (quoting ***Hosier v. State***, 593 S.W.3d 75, 81 (Mo. banc 2019)).

During the evidentiary hearing, Mother testified she and Movant suffered two losses in the year prior to sentencing and "this was a hard, hard year for [Movant] and she walked through it." Mother stated she "was so afraid that [Movant] would go back to using and she didn't." The letters from the two witnesses presented by Movant's trial counsel at sentencing, however, also discussed Movant's character and the progress she had made since the events that led to her charges. Mother's testimony as to Movant's rehabilitation and progress would have been cumulative of these other statements. Thus, it was not unreasonable for trial counsel to omit Mother as a witness at sentencing, and the motion court's finding to that effect was not clearly erroneous. *See* ***Beck***, 637 S.W.3d at 553; *see also* ***Williams v. State***, 168 S.W.3d 433, 441 (Mo. banc 2005) ("Counsel will not be found ineffective for deciding not to introduce cumulative evidence."). Point III is denied.

Conclusion

The Judgment of the motion court is affirmed.

MATTHEW P. HAMNER, J. – OPINION AUTHOR

JENNIFER R. GROWCOCK, C. J. – CONCURS

DON E. BURRELL, J. – CONCURS