



In the Missouri Court of Appeals Eastern District

DIVISION IV

WILLIE COOPER,)	No. ED94757
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Gloria Clark Reno
STATE OF MISSOURI,)	
)	
Respondent.)	FILED: February 15, 2011

Willie Cooper (Cooper) appeals from the motion court's judgment denying his Rule 24.035 amended motion for post-conviction relief on the merits, without an evidentiary hearing, after he pleaded guilty to stealing over \$500. We dismiss Cooper's appeal with directions to the motion court to vacate its judgment and dismiss Cooper's amended post-conviction motion because Cooper voluntarily, knowingly, and intelligently waived his right to file a petition for post-conviction relief as part of his plea agreement.

Facts

Cooper pleaded guilty to two counts of stealing over \$500, in violation of Section 570.030 RSMo (2000), arising out of his taking property from a Dillard's department store and a Victoria's Secret store without the consent of either store. At the plea hearing, Cooper stated his desire to enter a plea of guilty. The plea court explained that the upper range of sentence extended from seven years to fifteen years because Cooper had been charged as a persistent

offender. The State confirmed that it recommended a sentence of fifteen years' imprisonment, which was to be suspended and Cooper placed on five years' supervised probation. The State informed the plea court that Cooper was waiving his post-conviction relief remedies in exchange for the State's recommendation that the execution of Cooper's sentence be suspended and Cooper be placed on probation. The plea court confirmed with Cooper that the recommended sentence conformed to Cooper's understanding of the plea agreement.

The plea court then addressed Cooper's agreement to waive his right to any post-conviction remedy under Rule 24.035 as part of the plea bargain. The parties filed a document entitled "Waiver of Right to Proceed Under Rule 24.035 For Post Conviction Relief." The waiver recited that Cooper had been informed of his right to file a Rule 24.035 post-conviction motion, that the motion could be filed to seek relief for certain enumerated claims, and that the motion was the exclusive means of making such claims. The waiver concluded:

Defendant hereby states that having been so informed of his/her rights to post conviction relief as stated above, defendant waives the right to file any such motion in return for the State's agreement to recommend a specific sentence to the Court, or for such other agreements on behalf of the State. By so agreeing to waive this right Defendant understands that he/she will be forever barred from raising any such claims as enumerated above. Defendant also states to the Court that this waiver is made knowingly, voluntarily, and intelligently, with a full understanding of the above rights.

The waiver was signed by the assistant prosecuting attorney, Cooper's attorney, Cooper, and the judge. The plea court then asked Cooper if he had agreed to waive his right to seek post-conviction relief as part of his plea bargain, and Cooper replied that he had.

Cooper testified that no one made any promises or threats to him or his family to convince him to enter a plea of guilty. Cooper further testified that he believed his attorney had adequately, completely, and effectively represented him in his defense to the

charges. Cooper testified that he had been fully advised of all aspects of his case including his legal rights and the possible consequences of his plea, that his attorney had not failed to do anything he thought she should have done, and that he had no complaints or criticisms of his attorney.

The plea court again questioned Cooper about his understanding of the different rights he was giving up by pleading guilty. The plea court then specifically questioned Cooper regarding his waiver of his post-conviction rights, with the following exchange taking place on the record:

THE COURT: Now, as part of the plea agreement, it's my understanding that you are also waiving your right to post-conviction remedy under Rule 24.035; is that correct?

[Cooper]: Yes, sir.

THE COURT: All right. Is that a free and voluntary decision by you, sir?

[Cooper]: Yes, sir.

THE COURT: I want to go through those rights with you, just to make sure you know what you're giving up.

Mr. Cooper, you have the -- once you are sentenced, you have the right under Rule 24.035 to file within 180 days after your delivery to the custody of the Missouri Department of Corrections to file a motion to vacate, set aside or correct the judgment or conviction or sentence if you claim that, One, your conviction or the sentence imposed violates the Constitution or laws of the State of Missouri or the Constitution of the United States or that the Court was without jurisdiction to impose the sentence, or Three, that the sentence imposed was in excess to the maximum sentence authorized by law. Has your attorney explained this procedure to you, sir?

[Cooper]: Yes, sir.

The plea court again questioned Cooper about his understanding of the waiver of his post-conviction rights.

THE COURT: You understand, sir, that as part of the plea agreement, when you entered that plea of guilty, it's my understanding that you are giving up your right to proceed under this rule under these proceedings; is that correct?

[Cooper]: Yes, sir.

THE COURT: And that is a free and voluntary decision by you?

[Cooper]: Yes, sir.

The plea court found Cooper's plea to be made voluntarily and intelligently with a full understanding of the charges and the consequences of his plea, and that a factual basis for the plea had been established. The plea court accepted the plea and proceeded to sentencing. The plea court found Cooper to be a prior and persistent offender and sentenced Cooper to fifteen years' imprisonment on each count, to be served concurrently. The execution of Cooper's sentence was suspended and he was placed on probation for five years.

A probation revocation hearing was conducted on April 16, 2009, following which Cooper was found to have violated the conditions of his probation. The plea court revoked Cooper's probation and ordered him to serve the previously imposed sentence.

Cooper thereafter filed a *pro se* Rule 24.035 motion for post-conviction relief. Appointed counsel subsequently filed an amended motion and request for an evidentiary hearing. The motion court denied the request for an evidentiary hearing and entered written findings of fact, conclusions of law, and judgment denying the amended motion on the merits.

Cooper filed a notice of appeal to this Court. This appeal follows.

Discussion

On appeal, Cooper contends that the motion court clearly erred because he alleged facts, not refuted by the record, that his decision to plead guilty was involuntary. Cooper alleged that his plea counsel coerced him into pleading guilty by threatening to withdraw from the case, telling Cooper that he would automatically receive the maximum sentences to be served consecutively if he took his cases to trial and lost, and telling Cooper that his two cases were

joined for trial when they were not. Cooper claimed that had his plea counsel not misled and threatened him, he would not have pleaded guilty, but would have instead insisted on going to trial. We do not reach the merits of this claim because Cooper's waiver of his right to file a Rule 24.035 post-conviction motion as part of his plea bargain requires dismissal.

“A movant can waive his right to seek post-conviction relief in return for a reduced sentence if the record clearly demonstrates that the movant was properly informed of his rights and that the waiver was made knowingly, voluntarily, and intelligently.” Jackson v. State, 241 S.W.3d 831, 833 (Mo. App. E.D. 2007); see also State v. Sanning, 271 S.W.3d 56, 58 (Mo. App. E.D. 2008) (Addressing waiver of direct appeals, this Court noted that “when the defendant agrees to waive his right to appeal in exchange for a reduced sentence, then receives the ‘benefit of the bargain,’ the appellate court will not hesitate to hold the defendant to his part of the bargain.”).

The record before us clearly reflects that Cooper understood the terms of the plea agreement and that he was informed of his rights to file a Rule 24.035 post-conviction motion, the claims that could be made therein, and the exclusivity of that procedure for making those claims. The record further shows that Cooper freely, voluntarily, and knowingly waived those rights. Cooper confirmed the State's recitation of the plea agreement, which included a waiver of Cooper's right to post-conviction relief. The plea court then specifically questioned Cooper regarding his understanding and his decision to waive his right to post-conviction relief. Cooper also signed a document explaining his right to post-conviction relief, and stating his understanding of that right and his decision to waive that right.

Cooper knowingly, voluntarily, and intelligently waived his right to seek post-conviction relief under Rule 24.035. Cooper received the benefit of the bargain he made with the State, the

suspended execution of his sentence that was part of the plea bargain. Cooper's voluntary waiver of his right to file a Rule 24.035 post-conviction motion precludes our review of the merits of the motion court's denial of that motion. Jackson, 241 S.W.3d at 834.

Conclusion

We dismiss Cooper's appeal with directions to the motion court to vacate its judgment and dismiss Cooper's Rule 24.035 post-conviction motion.

Kurt S. Odenwald, Presiding Judge

Robert G. Dowd, Jr., J., Concur
Robert G. Wilkins, Sp. J., Concur