

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

FREDERICK WILLS

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD71271

DATE: July 20, 2010

Appeal From:

Boone County Circuit Court
The Honorable Clifford E. Hamilton, Jr., Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt,
Judges

Attorneys:

Alexa I. Pearson, Columbia, MO, for appellant.

Shaun J. Mackelprang and Jamie P. Rasmussen, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Boone County

Before Division Three Judges: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt, Judges

On December 5, 2006, Frederick Wills pled guilty to the crime of forcible rape. At the guilty plea hearing, Wills acknowledged that he understood that he was entering into an open plea of guilt, which meant that the circuit court would have sole discretion to sentence him anywhere from ten to thirty years or life in prison. On February 5, 2007, the circuit court held a sentencing hearing and sentenced Wills to twenty five years in the Missouri Department of Corrections based on his guilty plea.

Wills filed a motion for post-conviction relief. An evidentiary hearing was held on the motion. The motion court issued its Findings of Fact, Conclusions of Law, and Judgment, which denied Wills's post-conviction relief motion.

AFFIRMED.

Division Three holds:

In Point One, Wills argues that the circuit court erred in denying his motion for post-conviction relief in light of the fact that his guilty plea was not knowingly, intelligently, or voluntarily entered because at the time he entered his plea of guilt he was being deprived of long-prescribed psychiatric medications by authorities at the Boone County Jail, and this deprivation caused him to suffer from symptoms related to his diagnosis of Paranoid Schizophrenia and rendered him unable to understand the proceedings against him or to make rational decisions. Due process requires that a person who wishes to plead guilty must be competent to do so and must enter the plea knowingly and voluntarily.

The motion court expressly found that Wills's testimony that his mental illness made him unable to understand the proceedings against him or make rational decisions "to be not credible." Wills fails to demonstrate that the motion court's finding was clearly erroneous. The movant bears the burden of proving his post-conviction claims by a preponderance of the evidence. Beyond his own self-serving testimony, Wills produced no competent evidence to prove that he was deprived of any medication by the jail, or that he was in fact suffering from the symptoms that he described. Point denied.

In Point Two, Wills argues he received ineffective assistance of counsel prior to pleading guilty in that counsel failed to respond to Mr. Wills's requests to present evidence of his long history of serious mental illness to the court. He argues that he was prejudiced because there is a reasonable probability that if counsel had presented this information, the court would have ordered a mental examination and the results could have precluded the court's acceptance of the plea. Wills has failed to demonstrate even a reasonable probability that he was incompetent at the time he pled guilty. Wills has failed to adduce any credible evidence that would have given the motion court reasonable cause to believe that he lacked mental fitness at the time of his guilty plea. Therefore, Wills's plea counsel was not ineffective in this regard.

Wills also argues that he received ineffective assistance of counsel because his plea counsel failed to present evidence pertaining to his mental conditions at his sentencing hearing. Wills fails to respond to the trial court's finding that when "considering the evidence of mental health that Movant presented at the evidentiary hearing, this court's determination of the sentence would not have changed." Accordingly, it is difficult to discern how Wills was even plausibly prejudiced by the failure to present the evidence pertaining to his mental health at the sentencing hearing. Point Two is denied.

In Point Three, Wills argues that he received ineffective assistance of counsel because counsel unreasonably failed to act on a written request to withdraw his open plea of guilty prior to sentencing. The accused is not entitled to withdraw a guilty plea as a matter of right; such relief is reserved for extraordinary circumstances, such as a showing of fraud, mistake, misapprehension, fear, persuasion, or the holding out of false hopes. Wills failed to demonstrate that had his plea counsel filed the motion to withdraw the guilty plea, he would have been allowed to withdraw his guilty plea. Wills needs to make this showing in order to demonstrate that he was prejudiced by his attorney's alleged ineffective assistance of counsel. Point denied.

In his final Point, Wills argues that the motion court erred in denying his *pro se* motion for post-conviction relief "without entering specific findings of fact and conclusions of law on his *pro se* claims, which were addressed at the evidentiary hearing, because this failure denied Appellant due process of law." Here, the amended post-conviction relief motion filed by Wills's appellate counsel did not incorporate, either directly or implicitly, Wills's *pro se* claims. Therefore, such *pro se* claims were not properly before the motion court because they were a nullity, and the motion court's findings and conclusions pertaining to Wills's *pro se* claims were mere surplusage and cannot be a basis for post-conviction relief.

The judgment of the circuit court, denying Wills's claims, is hereby affirmed.

Opinion by: Gary D. Witt, Judge

July 20, 2010

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