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FILED
Dec 09 2009, 9:04 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

MAURICE A. BRADFORD,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 84A01-0901-PC-23
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael J. Lewis, Judge
Cause Nos. 84D06-0805-PC-1863, 84D06-0805-PC-1864

December 9, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Maurice A. Bradford appeals from the post-conviction court's denial of his petition for post-conviction relief. Bradford raises one issue[1] for our review, which we restate as the following two issues:

1. Whether he entered into his guilty plea knowingly, voluntarily, and intelligently.

2. Whether he was denied the effective assistance of counsel.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 6, 2005, the State charged Bradford with resisting law enforcement, as a Class D felony, and reckless driving, as a Class B felony. On July 31, 2006, the State, under a new cause number, charged him with two counts of dealing in cocaine, each as a Class B felony, and one count of resisting law enforcement, as a Class A misdemeanor. On March 20, 2008, Bradford entered into a plea agreement with the State. The trial court held a hearing on that agreement on March 24, 2008.

At the March 24 hearing, the following exchange took place:

> DEFENDANT: For the record on March 20th in between 9:30 a.m. and 10:30 a.m. I was in hospital cell 2 in the Vigo County Jail. I was called out with a visit from my attorney, Mike Rader. Mike Rader presented a plea to me that was on the table consisting of six years executed. I immediately denied it, then attempted to plan for a defense. Mike Rader at that time told me he had to go. At that time I was put back in hospital cell 2. . . . Maybe two hours after that I was approached by Mr. [Donnie] Wells, Public Defender investigator, saying that the Prosecutor would like to show me the

[1] Before the post-conviction court had entered its findings of fact and conclusions of law on Bradford's petition for post-conviction relief, Bradford filed in this court a brief raising for issues for our review. The trial court then entered its order against Bradford, and he filed an amended brief raising one issue, to which the State responded. Bradford's amended brief rendered his first brief moot and issues raised in that first brief but not in the second are waived.

audio and video [evidence]. . . . At that time Donnie Wells tells me that he's posing as my counsel in my defense. [Chief Deputy Prosecutor Rob Roberts] presents his video. . . . Then [he] offered me a plea agreement . . . which I denied. Then . . . another one for lesser time [that] I denied. Then he reminded me of how much time I would be facing when I was convicted in trial. I was terrified and still remain terrified. I was told that if I wanted the plea that I would have to sign it at that time, not take it into consideration that my attorney was not present [sic]. I feel that my rights have been violated and I would like to somehow have my bond reinstated until I can hire effective counsel.

* * *

Q [by the Prosecutor]: Okay. So what I did tell you though was I needed to know whether or not you were gonna take that plea agreement today. Right?

A [by Bradford]: Yes.

Q: I didn't say before I left, did I?

A: Huh?

Q: I didn't [say] you had to sign something before I left. Right?

A: No, you said today. You said today.

* * *

Q: Okay. So you had from whatever period of time we talked to you—and we left the jail a little after 4:00—until later on that evening when you actually signed that agreement to think about it. Right?

A: Well, actually he came right back.

Q: Okay. But I know he was here for at least a half an hour waiting for me to type it up. So you had time to think about it. Right?

A: Yeah.

Q: Okay. So . . . there was nobody in the cell putting any pressure on you during that time period, was there?

A: No.

* * *

Q: Okay. But yet when Mr. Wells came back and handed that document to you, you signed it at that time?

A: Yes. . . . Donnie Wells told me before I signed it, he said to sign this just so we can get it, you know, he said this doesn't necessarily mean that you have to take it. He said, "I'm not gonna hand this over to the Prosecutor until you discuss this with your attorney, Mike Rader." That's what he told me. So I really waited for Mike Rader for the next day to the next day to the next day. They never showed up and then all of a sudden today I'm popped up to go to trial to submit a plea bargain I never had a chance to . . . go over with my attorney.

Q: Okay. Okay. Well then let's talk about that a little bit. Because you're the one that actually negotiated the terms of that plea. Right?

A: Yes.

Q: Okay. . . . I told you that my general policy is if I charge you with a dealing crime that I expected a plea for dealing in cocaine. Right?

A: That's what you said.

Q: And you asked if you could walk away with this with just D felonies so that you would have the opportunity to go in the military after this. Right? And so that was the plea agreement you signed.

A: Yes, sir.

Q: So you had actually negotiated all of the terms of that plea agreement. Right?

A: Yes, sir . . . .

Q: And I understand you still wanted to talk with Mr. Rader about it. That's not a problem. But you understood all the terms of the agreement when we talked about it.

A: Yeah. Yes. To my knowledge, yes.

* * *

> Q [by defense counsel Mike Rader]: Maurice, you and I had talked about this plea agreement on two separate occasions then?
>
> A: Yes.
>
> * * *
>
> Q: And I . . . advised you that I thought it was in your best interest to take this plea. Didn't I?
>
> A: Yes.
>
> Q: And I also told you that I'm fully prepared to go to trial tomorrow, didn't I?
>
> A: Yes.
>
> * * *
>
> Q: And I think you made it clear that the terms of this agreement are what you negotiated with Mr. Roberts?
>
> A: Oh, yes. I mean, <u>there's nothing wrong with the plea agreement at all</u>. . . . I just wanted to make sure it was legit, because I don't want to feel . . . pressured into . . . doing something that, you know, I mean, I want to go by the book. . . .

Appellant's App. Vol. I at 4(a)-6(a), 9(a)-14(a) (emphasis added).

After that exchange, the court asked Bradford if he had signed the plea agreement. Bradford said he had. The court then asked Bradford if he had "discussed this agreement with Mr. Rader on a couple of occasions." <u>Id.</u> at 18(a). Bradford stated that he had. The court subsequently asked the parties if they were going to submit the plea agreement or go to trial, and Bradford stated that he was going to accept the plea agreement. The court advised Bradford of his rights, accepted the plea agreement, entered judgment of conviction on three Class D felonies and one Class A misdemeanor, and dismissed all

pending charges in three other cause numbers. The court sentenced Bradford to a total term of seven years executed.

On May 19, 2008, Bradford filed his pro se petition for post-conviction relief. On July 31, 2009, the post-conviction court entered its findings of fact and conclusions of law denying Bradford's petition. This appeal ensued.

DISCUSSION AND DECISION

Standard of Review

Bradford appeals from the post-conviction court's denial of his petition for post-conviction relief. The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); Saylor v. State, 765 N.E.2d 535, 547 (Ind. 2002). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Saylor, 765 N.E.2d at 547. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id. Further, the post-conviction court in this case entered findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6). "A post-conviction court's findings and judgment will be reversed only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made." Id.

Issue One: Guilty Plea

Bradford first asserts that his guilty plea was not entered into knowingly, voluntarily, and intelligently because his attorney was not present with him when he

negotiated the plea with the prosecutor. A guilty plea entered after the trial court has reviewed the various rights being waived by the defendant and has made the inquiries called for by statute is unlikely to be found wanting in a collateral attack. Cornelious v. State, 846 N.E.2d 354, 357-58 (Ind. Ct. App. 2006), trans. denied. However, defendants who can show that they were coerced or misled into pleading guilty by the judge, prosecutor, or defense counsel will present colorable claims for relief. Id. In assessing the voluntariness of a plea, we review all of the evidence before the post-conviction court, including testimony given at the post-conviction hearing, the transcript of the petitioner's original sentencing, and any plea agreements or other exhibits that are a part of the record. Id.

Bradford asserts that he was "intimidated . . . into agreeing to the plea" because the prosecutor met with him without his counsel present. Appellant's Brief at 9. In support, Bradford relies on this court's opinion in Hood v. State, 546 N.E.2d 847 (Ind. Ct. App. 1989). In that case, we reversed a defendant's guilty plea where the undisputed evidence demonstrated that the prosecutor had told the defendant that the State would drop an habitual offender enhancement if the defendant pleaded guilty without counsel. Id. at 848.

Hood is inapposite to this case. Here, the State did not make a condition of Bradford's plea the requirement that he never obtain or consult counsel. Indeed, Bradford did have counsel, he reviewed his plea agreement with his counsel, and his counsel informed him that accepting the plea agreement was in his best interest. It is apparent from the record that the trial court and the attorneys carefully explained to

Bradford the charges to which he was pleading and the consequences of his plea. Bradford indicated to the trial court that he understood all of those advisements and agreed to the factual bases for the charges. Based on that evidence, we conclude that the post-conviction court properly found that Bradford pleaded guilty knowingly, voluntarily, and intelligently.

Issue Two: Effective Counsel

Bradford also contends that he was denied the effective assistance of trial counsel. There is a strong presumption that counsel rendered effective assistance and made all significant decisions in the exercise of reasonable professional judgment, and the burden falls on the defendant to overcome that presumption. Gibson v. State, 709 N.E.2d 11, 13 (Ind. Ct. App. 1999), trans. denied. To make a successful ineffective assistance claim, a defendant must show that: (1) his attorney's performance fell below an objective standard of reasonableness as determined by prevailing professional norms; and (2) the lack of reasonable representation prejudiced him. Mays v. State, 719 N.E.2d 1263, 1265 (Ind. Ct. App. 1999) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)), trans. denied. Even if a defendant establishes that his attorney's acts or omissions were outside the wide range of competent professional assistance, he must also establish that but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. See Steele v. State, 536 N.E.2d 292, 293 (Ind. 1989).

As with his first argument, Bradford asserts that he was denied the effective assistance of counsel when his attorney "allow[ed] the prosecutor to engage in plea discussions without his presence." Appellant's Brief at 9. Bradford's argument is

without merit on the record before us. Again, Bradford testified to the trial court that he twice reviewed his plea agreement with his attorney and that his attorney informed him that accepting the agreement was in Bradford's best interest. Bradford also testified that he had actually negotiated a better plea for himself than his attorney had and that Bradford thought there was nothing wrong with the terms of the plea agreement. He is, therefore, not capable of demonstrating how the purportedly ineffective assistance of his counsel would have changed the result of the proceeding. See Steele, 536 N.E.2d at 293. Accordingly, we must affirm the post-conviction court's denial of Bradford's petition for post-conviction relief.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.