

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 09AP-394
	:	(C.P.C. No. 01CR-08-4593)
Antwaun Chandler,	:	
	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 5, 2009

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

Antwaun Chandler, pro se.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Antwaun Chandler is appealing from the denial of his petition for post-conviction relief. He assigns three errors for our consideration:

ASSIGNMENT OF ERROR NO. I

APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED HIM UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

ASSIGNMENT OF ERROR NO. II

THE TRIAL COURT ABUSED ITS DISCRETION WHEN FAILING TO BALANCE THE CREDIBILITY OF APPELLANT'S FATHER AGAINST APPELLANT'S FORMER TRIAL COUNSEL AND DENYING APPELLANT'S PETITION FOR POST-CONVICTION RELIEF.

ASSIGNMENT OF ERROR NO. III

THE TRIAL COURT ERRED WHEN FINDING THAT APPELLANT WAIVED HIS CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION BY WAIVING HIS RIGHTS AT THE SENTENCING HEARING.

{¶2} Chandler was bound over from juvenile court and indicted on charges of aggravated murder with a capital specification and aggravated robbery. In June 2002, he entered into a plea bargain under the terms of which he pled guilty to murder with a firearm specification. He was sentenced to a term of incarceration of 15 years to life following the service of a three-year term of incarceration for the firearm specification.

{¶3} In November 2002, he filed a petition for post-conviction relief which was originally construed as a motion to set aside his guilty plea. Subsequently, Chandler received an evidentiary hearing which was conducted without Chandler being represented by counsel. A panel from this appellate court vacated the trial court's denial of the petition and remanded the case for a determination of whether or not Chandler was entitled to representation by counsel.

{¶4} A second evidentiary hearing was conducted on May 29, 2008 with Chandler being represented by counsel. The trial court took the matter under advisement and issued a second decision and entry denying post-conviction relief on March 26, 2009. Chandler now appeals this ruling.

{¶5} At the second evidentiary hearing, Chandler was the first person to testify. Chandler claimed that he always intended to go to trial on his charges, despite knowing that Marshawn Shaw, one of the other men charged with robbery and aggravated murder in the case, had reached a plea agreement with the State of Ohio and intended to testify that Chandler was the man who shot and killed the victim during the robbery.

{¶6} Chandler claimed to have had minimal contact with his court-appointed attorney before the morning he was scheduled for trial. On the morning of the day set for trial, defense counsel informed Chandler that a second man involved in the robbery and murder had been arrested. This second man was Delontie Rhym.

{¶7} Chandler felt that his attorney had no confidence in the outcome of a trial, feeling that the State of Ohio had the ability to prove Chandler's guilt. The attorney encouraged Chandler to take the plea bargain and avoid the risk of longer incarceration, including a possible sentence of life without parole. The nature of that encouragement and the accuracy of what defense counsel stated were the issues in Chandler's petition for post-conviction relief.

{¶8} Chandler claimed his counsel said that Rhym had given a statement to police and was going to testify against Chandler. Rhym allegedly was going to testify Chandler was the triggerman in the murder and robbery. After being told this, Chandler decided to take the plea offer. He signed the plea form and answered all the questions required for the trial court to accept his guilty plea. After the plea was accepted, Chandler received the mandatory sentences.

{¶9} After arriving at prison, Chandler began communicating with Rhym and asking why Rhym had made statements harmful to Chandler. Rhym, who also was in prison by then, denied making the statements and eventually provided an affidavit in which he denied making any such statements. Rhym did not testify at the evidentiary hearing.

{¶10} Chandler contacted Rhym's attorney, who also said Rhym had not planned to testify against Chandler. Rhym's attorney also did not testify at the evidentiary hearing. As a result of these communications, Chandler felt his lawyer had lied to him to get him to plead guilty.

{¶11} At the evidentiary hearing, Chandler acknowledged that he was involved in the robbery and murder, but denied being the shooter. However, Chandler acknowledged that at the time of his guilty plea, the prosecution stated that Chandler shot the victim and Chandler did not disagree or deny the statement. Chandler also stated at the plea proceedings that he was pleading guilty because he was guilty.

{¶12} When asked at the evidentiary hearing to explain his involvement, Chandler claimed to be no more than an observer to a robbery initiated by Marshawn Shaw which ended with Shaw shooting the victim.

{¶13} Chandler also denied being involved in a separate robbery and shooting which occurred earlier in the day.

{¶14} The second witness at the evidentiary hearing was Charles Alexander, Chandler's father. Alexander testified that Chandler's attorney told Alexander that Rhym was going to testify against Chandler. Alexander claimed he did not encourage or

discourage his son from taking the plea agreement. Alexander also testified that he did not tell his son about the conversation Alexander had with the defense attorney.

{¶15} The State of Ohio called two witnesses to testify at the evidentiary hearing. The first was Jeffrey R. Davis who was an assistant prosecuting attorney assigned to Chandler's case at the time of trial. Davis testified that an agreement had been reached with Shaw for Shaw to testify against Chandler. Rhym was not originally indicted with Shaw and Chandler due to a lack of evidence. Then a girlfriend or ex-girlfriend of Rhym provided information which allowed the prosecution to believe that they now had sufficient evidence to indict Rhym. Rhym was then arrested a few days before Chandler's trial date.

{¶16} Davis informed Chandler's lawyer about the developments involving Rhym. Davis told the defense lawyer that they would be approaching Rhym with the same plea offer made to Shaw in return for Rhym's testimony. Davis told the lawyer that the offer of a plea to murder with a gun specification was only open until the following morning. After that, Chandler could expect to face a charge of aggravated murder with a capital specification. Davis indicated that he knew Rhym was represented by counsel, so neither he nor the police detective tried to contact Rhym directly. Davis indicated that he had significant other evidence of Chandler's guilt.

{¶17} The second witness called by the State of Ohio at the evidentiary hearing was Phillip Lon Allen, who was Chandler's attorney at the time of the plea. Allen gave a history of his extensive experience as a criminal defense lawyer. Allen discussed his actions as counsel for Chandler, including full preparation for trial at a time the key

witness was viewed as being Shaw. After Rhym was arrested, Chandler's attitude about going to trial changed drastically.

{¶18} Allen denied telling Chandler that Rhym had signed a plea agreement or that Rhym would certainly be a witness. Allen also denied telling Chandler or his father that Rhym had made statements implicating Chandler. Allen testified he had regular contact with Chandler during the time he represented Chandler.

{¶19} Turning to the third assignment of error, the trial court's ruling that Chandler had waived his right of self-incrimination at the time of the plea proceedings, was clearly correct with respect to the statements Chandler made in open court at the time of his plea. Chandler was admitting guilt in particular with respect to the homicide and murder and knew he was doing so while entering a plea of guilty.

{¶20} The trial court's permitting the prosecution to ask about other crimes may have been in error, but Chandler denied all the other crimes, so Chandler was not harmed by the questions. Thus, no reversible error occurred.

{¶21} The third assignment of error is overruled.

{¶22} As to the second assignment of error, the trial court was in a better position to weigh the credibility of the witnesses than this appellate court is. Even assuming that Chandler's father was totally truthful, the outcome of the petition for post-conviction relief proceedings would be the same, as will be explained more fully with respect to the first assignment of error.

{¶23} We cannot say the trial court abused its discretion in accepting trial counsel's recollection of what occurred, but the credibility of Chandler's counsel and Chandler's father is not of critical importance.

{¶24} The second assignment of error is overruled.

{¶25} The first assignment of error directly asserts that Chandler received ineffective assistance of counsel at and near the time of his plea bargain being accepted.

{¶26} The crucial case in determining effective assistance of counsel is *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. The *Strickland* case holds that the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the adversarial process that the criminal proceedings cannot be relied on as having produced a just result. A defendant alleging that he or she was denied the effective assistance of counsel must prove that counsel's performance was deficient and that the deficient performance prejudiced the defense to the point that the criminal proceedings were not fair. Further, the defendant must show both that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

{¶27} Defense counsel for Chandler did not recall himself as having definitively stated that Rhym would testify against Chandler along with Shaw. However, such a result was at least likely. Rhym was charged with aggravated murder with a capital specification, as Shaw had been. Shaw had been permitted to plead to a scheduled felony for which he could receive no more than a ten year sentence. Rhym was facing the same set of options—go to trial on a charge for which he could receive a sentence of

life of imprisonment without parole or take an offer which limited him to a maximum of ten years of incarceration.

{¶28} The plea bargain taken by Chandler saved him the risk of a sentence of at least 28 years to life and the risk of a longer sentence yet, including a life of incarceration without parole. Defense counsel for Chandler was functioning very much as counsel by giving his client information the client did not want to hear and encouraging his client to do what was in the client's best interest.

{¶29} Further, the evidentiary hearing showed that Chandler had been selling crack cocaine the afternoon of the robbery and murder. That activity, combined with Chandler's admission that he was present at the robbery and murder scene with a friend who Chandler now claims had been the actual murderer made Chandler's defense less than fully credible. Counsel did what was best for Chandler, namely fully prepare for trial but then urge his client to take a plea when the potential witness list suddenly changed.

{¶30} Again, Chandler was not deprived of the effective assistance of counsel.

{¶31} The first assignment of error is overruled.

{¶32} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and SADLER, JJ., concur.
