

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

FILED
JAN - 5 2016

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

TRAVIS MURPHY,)
)
 Movant,) **PCR**
) No. 1522-CC10438
 vs.)
) Division No. 12
 STATE OF MISSOURI,)
)
 Respondent.)

ENTERED
JAN - 5 2016

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Movant has timely filed a motion pursuant to Rule 24.035. Movant's counsel entered her appearance on movant's behalf on September 4, 2015, she was granted a thirty day extension for the filing of an amended motion and counsel timely filed the amended motion on November 3, 2015. Having examined the records and files in this case, the Court now finds as follows:

FINDINGS OF FACT

1. Movant was charged in Cause No. 1422-CR01710-01 as a prior and persistent offender with one count of burglary second degree, one count of felony stealing, three counts of misdemeanor stealing and one count of property damage second degree. The charged crimes occurred on May 6, 2014.

2. Movant was charged in Cause No. 1422-CR01719-01 as a prior and persistent offender with two counts of robbery first degree,

two counts of kidnapping and four counts of armed criminal action. The crimes occurred on April 7, 2014.

3. Movant was charged in Cause No. 1522-CR00772-01 as a prior and persistent offender with burglary second degree and misdemeanor stealing. The crimes occurred on May 21, 2012.

4. Movant pleaded guilty on February 2, 2015 to the charges in Cause Nos. 1422-CR01719-01 and 1422-CR01710-01. Movant pleaded guilty to the charges in Cause No. 1522-CR00772-01 on March 13, 2015. The pleas were not pursuant to an agreement with the State.

5. The record reflects movant understood that by entering blind pleas, his sentences would be up to the Court to decide and that a sentencing assessment report would be prepared prior to pronouncement of his sentences. Movant understood there were no promises or guarantees with regard to what his sentences would be, and he understood there was no agreement with the State.

6. Movant was sentenced in all three cases on March 13, 2015, to concurrent terms of fifteen years on the felony counts in Cause Nos. 1522-CR00772-01 1422-CR01710-01, and to concurrent terms of twenty years on each count in Cause No. 1422-CR01719-01, for a total of twenty years.

7. Movant was represented by Matthew Waltz and the State was represented by Natalie Warner.

8. Movant understood the rights he was waiving by his guilty pleas.

9. The record reflects that movant understood the charges in all three cases and he told the Court his attorney had discussed the cases sufficiently with him.

10. Movant understood the ranges of punishment on the charges. Movant understood the range of punishment as a prior and persistent offender on the robbery charges was ten to thirty years or life, three years to life for armed criminal action, and one year to fifteen years for burglary.

11. Movant told the Court that nobody had made any promises or guarantees to get him to plead guilty, and nobody had threatened or intimidated him.

12. Movant said he was making his pleas voluntarily and without any threats or promises.

13. Movant admitted the facts recited by Ms. Warner were true.

14. Movant admitted he previously pleaded guilty to burglary and two counts of stealing in 2009 and he pleaded guilty to distribution of marijuana in 2010.

15. Movant testified that he did not take any medication, he did not suffer from any health or hearing problems and he had not been treated for any mental problems.

16. Movant testified during the first guilty plea proceeding that he had no complaints against Mr. Waltz.

17. Ms. Warner asked the Court to sentence movant to a total of thirty years. Mr. Waltz asked the Court to consider a total of sixteen point four years.

18. Movant testified after being sentenced in all three cases that he had discussed his cases sufficiently with Mr. Waltz, he had been advised of his rights, he had no witnesses for Mr. Waltz to investigate, and Mr. Waltz had done everything movant asked.

CONCLUSIONS OF LAW

1. Movant has requested an evidentiary hearing. To be entitled to an evidentiary hearing the movant must plead facts, not conclusions, which are not refuted by the record, which if true would entitle movant to relief, and the matters complained of must have resulted in prejudice. Woolridge v. State, 239 S.W.3d 151, 154 (Mo.App.E.D. 2007); Mosby v. State, 236 S.W.3d 670, 675 (Mo.App.S.D. 2007). A movant is not entitled to a hearing where the motion, files and record of the case conclusively show that the movant is not entitled to relief. Rule 24.035(h); State v. Fraction, 782 S.W.2d 764, 769 (Mo.App. 1989); Welch v. State, 770 S.W.2d 441 (Mo.App. 1989). This Court has reviewed the files and transcript in this case and finds that movant has failed to allege grounds that would entitle him to relief if true and that are not refuted by the record. Movant is therefore not entitled to an evidentiary hearing.

2. The only claim in movant's amended motion is that his attorney was ineffective for failing to reach a plea agreement with the State for a more lenient total than the twenty years he received.

After a plea of guilty the effectiveness of counsel is only cognizable and relevant as it affects the voluntariness of the plea. Coke v. State, 229 S.W.3d 638, 641 (Mo.App.W.D. 2007); Salinas v. State, 96 S.W.3d 864, 865 (Mo.App.S.D. 2002). The movant must show that but for his counsel's errors he would not have pled guilty and would have insisted on going to trial. Zarhouni v. State, 313 S.W.3d 713, 716 (Mo.App.W.D. 2010).

The failure of an attorney to advise a client of a pending plea offer ordinarily constitutes ineffective performance. State v. Colbert, 949 S.W.2d 932, 946 (Mo.App.W.D. 1997); Members v. State, 204 S.W.3d 210, 212 (Mo.App.W.D. 2006). A movant claiming counsel was ineffective for failing to advise him of a plea offer must prove that the State would not have withdrawn the offer and the plea court would have accepted the offer. Frye v. State, 392 S.W.3d 501 (Mo.App.W.D. 2013).

Here, movant does not claim there was a pending offer from the State and that his attorney either failed to advise him of the offer or was ineffective in advising him whether to accept the offer. Rather, movant claims his attorney should have attempted to negotiate for a better sentence than the one he received with his blind pleas.


The Court finds movant's claim is without merit because the record indicates that movant's guilty pleas were voluntary and movant stated his attorney did everything movant asked. The suggestion that he might have been able to get a better deal amounts to mere speculation that the State, which was asking for thirty years, would have agreed to less than twenty, and that the Court would have accepted such an agreement.

ORDER

The Court has reviewed the record, relevant case law and movant's Rule 24.035 Motion. The Court finds that movant has failed to allege facts which are not refuted by the record and which entitle him to relief.

THEREFORE, the Court orders, adjudges and decrees that Movant's request for a hearing is DENIED and that the Motion made pursuant to Supreme Court Rule 24.035 is DENIED.

SO ORDERED:


Dennis M. Schaumann, Judge

Dated: January 5, 2016