

**IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
Division 2**

)	
Movant,)	
)	
vs.)	Case No. 1731-CC01644
)	
STATE OF MISSOURI,)	
Respondent.)	

ORDER

Pending before the Court is a Motion by the Movant pursuant to Rule 24.035. In that motion, Movant claimed that his original attorney, Stuart Huffman, failed to provide him with adequate representation during the pendency of his case. As such, he seeks to set aside his plea.

A hearing on this matter was held on January 17, 2019, at which time evidence was received from the Movant and Stuart Huffman.

In his motion, Movant contends that his attorney promised him that he would receive a maximum of 20 years in the Department of Corrections and that he would not receive consecutive sentences. Movant also contends that his attorney incorrectly advised him that he would be eligible to petition the Court for a sentence reduction pursuant to §558.046.

When raising a claim of ineffective assistance of counsel pursuant to 24.035, Movant bears the burden of proving by a preponderance of the evidence that his attorney's representation did not conform to the degree of skill, care, and diligence of a reasonably competent attorney and that the representation he received from his attorney prejudiced his defense. *State v. Hall*, 982 S.W.2d 675, 680 (Mo. banc 1998); *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

As noted, Movant claims that his attorney promised him that he would only receive a twenty year sentence and that his sentences would not be consecutive. However, Movant's claim is directly contradicted by his sworn testimony at the time of the plea and by his sworn testimony at the PCR hearing.

Specifically, Movant was advised at the time of the plea of the range of possible punishment that could be imposed in this matter. In addition, the Court inquired of Movant at the time of the plea if any promises had been made to him concerning the ultimate sentence to be imposed other than what was contained in the written plea agreement. Movant acknowledged the sentencing range and testified that there were no other promises.

Further, Movant was advised that the Court, not his attorney or the State, would be the one who ultimately decides the sentence in this matter. Movant was also advised that he would not be permitted to withdraw his plea if he was dissatisfied with the sentence. Movant also acknowledged those admonitions. Following sentencing, Movant again testified under oath that there had been no promises made to him to get him to plead guilty other than the written plea agreement.

At the PCR hearing, Movant again testified under oath that his attorney never promised him that he would receive a maximum sentence of 20 years. At that hearing, Stuart Huffman confirmed that he had not promised his client that he would receive a 20 year sentence.

Mr. Huffman further testified that he advised his client that the State would be seeking consecutive sentences and advised him of another matter in which this Court imposed consecutive sentences in a police shooting case. Finally, Mr. Huffman testified that he did not

advise the Movant that he could seek a reduction in sentence pursuant to §558.046.¹ The Court finds the testimony of Stuart Huffman on each of these points to be credible.

In light of the testimony by Movant and Stuart Huffman, the Court finds that Movant was well aware of the sentences that the Court could impose and that no promises had been made to him by his attorney concerning sentencing. The Court further finds that Movant was never advised by his attorney that he could seek a reduction in sentence pursuant to §558.046.

As such, Movant's claim of ineffective assistance of counsel on these issues concerning his entry of a guilty plea in the underlying criminal case must be denied.

In his petition, Movant also challenges his conviction as to Count One by arguing that his attorney failed to advise him of a material element as to Count One. Movant also contends that the trial court failed to establish a factual basis of assault on a law enforcement officer in the second degree during the plea hearing in this matter and that his attorney erred by failing to object to the lack of a factual basis for that count.

At the time of the plea, the Court conducted a lengthy colloquy with the Movant. During that colloquy, the Court satisfied itself that there was a factual basis to Movant's guilty plea and that Movant's plea was made freely and voluntarily.² *Western v. State*, 760 S.W.2d 174, 175 (Mo.App. 1988). Despite Movant's contention to the contrary, the Court was not required to explain every technical element of the offense to Movant. *State v. Acton*, 665 S.W.2d 618, 620 (Mo. banc 1984).

Moreover, Movant's contention that the essential elements of Count One were not established by the trial court is refuted by the transcript of the plea colloquy during which Movant admitted that he recklessly placed Officer Pinegar in apprehension of immediate serious

¹ At the PCR hearing, Movant did not offer any evidence to support his claim that Mr. Huffman advised him that he could receive a reduction pursuant to §558.046.

physical injury by firing a 9mm pistol while knowing that the officer was in the vicinity. Further, Stuart Huffman testified that Movant discussed his purpose of firing the shot while the police were pursuing him was to effect his escape. The Court finds this testimony to be credible.

As such, Movant cannot now claim that he did not understand the nature of the charge to which he plead guilty. *State v. Taylor*, 929 S.W.2d 209, 217 (Mo. banc 1996) . Thus, Movant's claim of ineffective assistance of counsel on these issues concerning the factual basis for his entry of a guilty plea as to Count One must be denied.

Finally, Movant claims that his attorney was ineffective for failing to advise the Movant of his right to submit a lesser included offense as to Count One should the matter have proceeded to trial.

In *Wedlow v. State*, 841 S.W.2d 214 (Mo. App. W.D. 1992), a similar challenge was considered. In that case, the movant claimed that his trial counsel failed to inform him that the jury could be instructed on lesser-included offense. In rejecting the argument, the Court of Appeals held that a defendant does not have to be specifically informed of each detail of the trial by jury that he is waiving. *Id at 215. See, Muhammad v. State*, 367 S.W. 659 (Mo App. 2012). As such, Movant's claim for relief on this issue is clearly without merit.

However, even if Mr. Huffman should have advised the Movant of the potential for a lesser included charge should the matter go to trial, Movant is still not entitled to relief since he has failed to establish that he was prejudiced by the actions of his attorney. Thus, he has failed to satisfy the second prong of *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

During the PCR hearing on this matter, Stuart Huffman testified that the Movant always intended for this case to be resolved by a guilty plea and never intended for this matter to go to trial. The Court finds this testimony to be credible.

Further, Mr. Huffman's testimony is corroborated by Movant's telephone call during which he said that he could not go to trial. Since Movant made it clear from the outset that he never intended for this matter to go to trial, there was no need for Mr. Huffman to provide Movant with a laundry list of all possible scenarios and defenses that they could possibly pursue at trial. Instead, Mr. Huffman focused and succeeded on the task assigned to him-work out a plea agreement which minimized his exposure on Movant's other cases with the State and keep him from being indicted on federal charges.³

In light of the totality of the evidence submitted, the Court finds that Movant has failed to establish that he would have proceeded differently and gone to trial in this matter if he had been advised of the possibility of a lesser included offense. As such, Movant has failed to establish any prejudice caused by his attorney's actions. Therefore, his amended motion to set aside his plea to Count One must be denied.

Wherefore, for the foregoing reasons, Movant's Amended Motion pursuant to Rule 24.035, is denied.

SO ORDERED.

Dated April 15, 2019



David C. Jones
Circuit Judge

³ The evidence at the PCR hearing supports the finding that Movant never intended for this matter to proceed to trial and that a major factor in Movant's decision to plead guilty was the State's agreement to dismiss another serious case against him and not to refer a case to the U.S. Attorney for prosecution. The Court finds this evidence to be credible.