

Randell Johnson appeals the post-conviction court's denial of his petition for post-conviction relief. Johnson raises one issue, which we revise and restate as whether the post-conviction court erred by denying Johnson's petition for post-conviction relief. We affirm.

The relevant facts follow. On December 31, 2006, Johnson operated a vehicle while intoxicated in a manner that endangered a person in Hancock County. On May 30, 2007, Johnson pled guilty to operating while intoxicated as a class A misdemeanor. At the guilty plea hearing, the trial court asked Johnson if he read the plea agreement and discussed it with his attorney, and Johnson answered affirmatively. The trial court also explained Johnson's rights and the possible sentences to Johnson. The following exchange also occurred at the hearing:

THE COURT: Sir did anybody promise you anything other than [sic] what's contained in the agreement to get you to plead guilty?

[Johnson]: No sir.

THE COURT: Anyone threaten you or intimidate you in any way to get you to plead guilty?

[Johnson]: No sir.

THE COURT: Is pleading guilty your own free and voluntary act?

[Johnson]: Yes sir.

Appellant's Appendix at 22. The trial court accepted Johnson's offer to plead guilty and asked Johnson if he wanted to make a statement, and Johnson responded, "No sir." Id. at

23. The trial court sentenced Johnson to one year suspended with one year on probation pursuant to the plea agreement. The trial court then engaged in a discussion with Johnson regarding his bond, and Johnson indicated that he could “pay it today.” Id. at 25. The hearing took place at 9:00 a.m.

On June 30, 2008, Johnson filed a verified petition for post-conviction relief and petition to set aside his conviction. Johnson argued that he lacked sufficient knowledge to tender an informed plea of guilty because his “physical and emotional condition at the time of the hearing was such that he lacked the capacity to tender an informed plea.” Id. at 6. Johnson also argued that he “was not questioned at any time during of [sic] the hearing for disposition (the plea hearing), in open court, if he was under the influence of alcohol, other intoxicants or judgment altering medication.” Id. Lastly, Johnson argued that “at the time of the hearing [Johnson] was on medication that may have affected his judgment,” and he was “suffering from Depression, which resulted in him medicating himself with alcoholic beverage.” Id.

At the post-conviction hearing, Dr. Curtis Hall, Johnson’s primary care provider since June 2007, testified that Johnson was depressed and had a general anxiety disorder when he started treating him. Dr. Hall also testified that Johnson was abusing alcohol at that time. The following exchange occurred during direct examination of Johnson:

Q Uh, on the day of the Plea Agreement were you drinking?

A Well that’s been a while but since I drank everyday I would have to say yes.

Q In fact you started quite early uh, early in the morning didn't you?

A Uh, basically I would start out slowly, and to get rid of the anxiety and jitters yes and then drink through out the day.

Q At the time of the hearing on Thursday uh, had you been drinking?

A Embarassingly yes.

* * * * *

Q [D]id you have an awareness of what you were doing on that day?

A Well I had the awareness that I was going to Court and that I had been arrested and you know that sort of thing yes.

Q Okay. Do you, do you have any memory of the actual proceedings of that day?

A No I really don't. I mean other then [sic] this Courtroom looks vaguely familiar.

Q Okay at that time or looking back at that do you have questions whether you would have accepted that Plea Agreement at that time?

A Uh, yes in retrospect looking back on the whole situation I basically uh, I don't know how to say this. I was so emotionally upset and all of that I basically got a lawyer and said what should we do and I just went through the steps.

Post-Conviction Hearing Transcript at 13. On cross examination, the State asked Johnson whether he had “buyer’s remorse for entering into” the plea agreement, and Johnson answered, “Yes.” Id. at 16. The trial court explained that “buyer’s remorse” meant that “you entered into a deal and now you don’t want to go through with the deal and your [sic] stuck and you’re trying to get out of it.” Id. at 17. Johnson answered that such a description was accurate.

The following exchange occurred between the trial court and Johnson:

Q Here's the problem I have sir. You were working this job where you have responsibility, but you are telling the Court that you don't have enough awareness to knowingly enter a plea although in the transcript you properly and appropriately answer every question asked of you by the Court and you were represented. That's a hard pill for the Court to swallow. And sir then uh, you said that you'd been drinking at the time of your Court appearance. This was 9:00, 9:30 in the morning. How much had you consumed by then sir?

A Um I, I don't know exactly how much I would have consumed but in the morning I would typically take some bourbon and drink a few ounces of that to feel better and then . . .

Q Two (2) three (3) ounces of bourbon?

A First thing in the morning and then after that I would have maybe a . . .

Q By the time you got here at 9:00 o'clock how much do you think you had had to drink?

A Some where between uh, around a half a pint or . . .

Q You think you had a half a pint by the first thing in the morning and neither of the Community Corrections Officer or the Probation Officer or the Court Reporter or me or the State noticed that? Do you think that's accurate you are drinking bourbon which smells to high heaven.

* * * * *

Q Sir it's really difficult for me to believe that you were incapable of understanding this Plea Agreement. Especially when we went over it in Court and you answered every question appropriately.

Id. at 19-20.

The post-conviction court denied Johnson's petition. Specifically, the trial court's order stated:

THE COURT FINDS THAT [JOHNSON] WAS PROPERLY ADVISED DURING HIS GUILTY PLEA AND THAT THE GUILTY PLEA WAS PROPERLY TAKEN. THE COURT FINDS NO INDICATION TO SUGGEST THAT [JOHNSON]'S PLEA WAS ANYTHING OTHER THAN A KNOWING AND INTENTIONAL GUILTY PLEA. [JOHNSON] ANSWERED ALL QUESTIONS APPROPRIATELY AND WAS REPRESENTED BY COUNSEL AT THE TIME OF HIS GUILTY PLEA. THEREFORE, THE COURT FINDS NO BASIS FOR GRANTING [JOHNSON'S] PETITION FOR POST-CONVICTION RELIEF.

Appellant's Appendix at 14.

Before discussing Johnson's allegations of error, we note the general standard under which we review a post-conviction court's denial of a 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. Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. 810 N.E.2d at 679. 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 thereon in accordance with Indiana Post-Conviction Rule 1(6). Id. "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. In this review, we accept findings of fact unless clearly erroneous, but we accord no deference to conclusions of law. Id. The post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. Id.

The sole issue is whether the post-conviction court erred by denying Johnson’s petition for relief. Johnson argues that the post-conviction court erred when it concluded that Johnson’s guilty plea was entered into knowingly, intelligently, and voluntarily. “To be valid, a guilty plea must be made knowingly, voluntarily and intelligently.” Peace v. State, 736 N.E.2d 1261, 1266 (Ind. Ct. App. 2000), trans. denied. “Prior to the acceptance of a guilty plea, a trial court must determine that such plea is voluntarily made.” Curry v. State, 674 N.E.2d 160, 161 (Ind. 1996), abrogated on other grounds by Hall v. State, 849 N.E.2d 466, 470 (Ind. 2006). See also Ind. Code § 35-35-1-3 (“The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the plea is voluntary.”). To satisfy the federal constitution, the record must show, or there must be an allegation and evidence which show, that the defendant was informed of, and waived, three specific federal constitutional rights: the Fifth Amendment privilege against compulsory self-incrimination and the Sixth Amendment rights to trial by jury and to confront one’s accusers. Curry, 674 N.E.2d at 161 (citing Boykin v. Alabama, 395 U.S. 238, 242-243, 89 S. Ct. 1709, 1712 (1969)).

On appeal, Johnson concedes that the trial court recited his Boykin rights. Johnson argues that “he did not waive these rights voluntarily and intelligently because

his mind was thickly clouded by the intoxicating effects of alcohol and prescription drugs and the trial court did not make an adequate inquiry into whether Johnson fully comprehended the rights he was waiving.” Appellant’s Brief at 9.

In Patterson v. State, 500 N.E.2d 1191, 1193 (Ind. 1986), reh’g denied, the defendant claimed that the trial judge failed to ask him if he was under the influence of alcohol or drugs at the time he entered his plea. The defendant requested the Indiana Supreme Court to adopt a requirement that trial judges make such an inquiry as part of the determination of the voluntariness of a plea. 500 N.E.2d at 1193. The Court held that “[t]he guilty plea statute does not require the specific inquiry proposed by appellant, and we decline his request to engraft a new requirement onto the statute.” Id. The Court also held: “Where the court conducting a guilty plea hearing, either from its own knowledge or facts presented to it, has reasonable grounds for believing the defendant does not have sufficient comprehension to understand the proceedings, it shall immediately hold a hearing to determine whether the defendant has that ability.” Id.

Here, at the guilty plea hearing, the following exchange occurred:

THE COURT: And sir on the bottom of [the plea agreement] there is signature [sic] that appears to be yours. Did you sign that document?

[Johnson]: Yes sir.

THE COURT: Did you read this document thoroughly before you did so?

[Johnson]: Yes sir.

THE COURT: And did you discuss it with your attorney before you did so?

[Johnson]: Yes sir.

THE COURT: And are you asking the Court to accept this agreement today?

[Johnson]: Yes sir.

THE COURT: Sir the following rights apply in your case. You have the right to a public and speedy trial by jury. You have the right to confront and cross examine any witnesses who testifies [sic] against you. You have the right to use the subpoena powers of this Court at no expense to you to obtain your own witnesses. You have the right to require the State of Indiana to prove you're guilty beyond a reasonable doubt and in the event they fail to do so you have the right to be acquitted or to be found not guilty. You have the right to counsel and in the event you can not afford counsel one will be appointed for you. You have the right not to be compelled to testify against yourself and the right to appeal any judgment of conviction. Do you understand those rights sir?

[Johnson]: Yes sir.

THE COURT: Do you understand that by pleading guilty you would be waiving or giving up all of those rights except the right to counsel?

[Johnson]: Yes sir.

THE COURT: Do you understand the possible penalty range for Operating While Intoxicated as a Class "A" misdemeanor is anything from zero (0) days in jail up to one (1) year in jail. And up to a Five Thousand Dollar (\$5,000) fine?

[Johnson]: Yes sir.

THE COURT: Do you also understand sir upon conviction of this offense today the conviction will be sent to the Bureau of Motor Vehicles. It will become a permanent part of your driving record. It can be used again in the future to enhance other offenses, such if you are arrested for Operating While Intoxicated again and it carries a mandatory license suspension. Do you understand that sir?

[Johnson]: Yes sir.

THE COURT: Sir did anybody promise you anything other then [sic] what's contained in the agreement to get you to plead guilty?

[Johnson]: No sir.

THE COURT: Anyone threaten you or intimidate you in any way to get you to plead guilty?

[Johnson]: No sir.

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Appellant's Appendix at 20-22.

Johnson's statements at the plea hearing were coherent and responsive. We cannot say that the trial court from its own knowledge or facts presented to it had reasonable grounds for believing that Johnson did not have sufficient comprehension to understand the proceedings. See Middleton v. State, 567 N.E.2d 141, 143 (Ind. Ct. App.

1991) (observing that “[w]hile many of [the defendant]’s responses during his guilty plea colloquy with the guilty plea court were ‘yes sirs’, that in and of itself is not unusual given the nature of the standard questions propounded to a defendant,” and concluding that the record was devoid of anything at the guilty plea hearing which imposed a duty upon the guilty plea court to hold a hearing to determine if the defendant had sufficient comprehension to understand the proceeding).

Moreover, while the evidence at the post-conviction hearing reveals that Dr. Hall, Johnson’s primary care provider since June 2007, testified that Johnson was depressed and had a general anxiety disorder when he started treating him, the State points out that Dr. Hall did not begin treating Johnson until after the guilty plea hearing. The State also points out that Johnson did not provide medical records or call his prior physician or attorney as witnesses. On appeal, Johnson claims that he was under the influence of prescription drugs, but the record does not reveal how any prescription drug Johnson may have been taking affected his ability to plead guilty voluntarily and intelligently.¹

¹ Dr. Hall testified that Johnson “was on a medication for depression” at the time that he began treating Johnson, but as previously mentioned Dr. Hall did not begin treating Johnson until after the guilty plea hearing. Post-Conviction Hearing Transcript at 8. Further, Dr. Hall did not testify how this medication for depression affected Johnson. Johnson testified:

[Dr. Hall] analyzed the meds I was on and sent me to uh uh, referred me to uh, a psychiatrist and they conferred we re-arranged medications and tried a few things and uh, my particular uh, mental disorder what have you. Did not respond to uh, what the common, the most common drugs they are using. Like the Prozac and that sort of thing. And so they work diligently to find something else which is uh, it’s actually a bi-polar drug Seroquel and uh, since that time I have not, I haven’t had a drink or desire to drink.

Id. at 14. Based upon Johnson’s testimony, we cannot say how Johnson’s medications may have affected his ability to plead guilty.

Based upon our review of the record, we cannot say that the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. See Dewitt v. State, 755 N.E.2d 167, 170-171 (Ind. 2001) (rejecting the defendant's argument that the post-conviction court erred by concluding that the defendant's decision to plead guilty was not knowing, voluntary, and intelligent); Mescher v. State, 686 N.E.2d 413, 414-415 (Ind. Ct. App. 1997) (holding that the defendant's guilty plea was entered into knowingly, voluntarily, and intelligently), reh'g denied, trans. denied.

For the foregoing reasons, we affirm the post-conviction court's denial of Johnson's petition for post-conviction relief.

Affirmed.

CRONE, J., and MAY, J., concur.