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2018 IL App (3d) 160551-U

Order filed September 28, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0551
)	Circuit No. 13-CF-90
RASHA BASSAM TALAFHAH,)	Honorable
Defendant-Appellant.)	Albert L. Purham Jr., Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err when it denied defendant's petition for postconviction relief following a third-stage evidentiary hearing.

¶ 2 Defendant, Rasha Bassam Talafhah, appeals the denial of her postconviction petition at the third stage. We affirm.

¶ 3 **FACTS**

¶ 4 The State charged defendant with two counts of burglary (720 ILCS 5/19-1(a) (West 2012)) and one count of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2012)).

¶ 5 At an initial hearing, plea counsel informed the court that the parties had reached a plea agreement in which defendant would plead guilty to the charge of possession of a stolen motor vehicle. In exchange, the State would dismiss the two burglary charges. The parties agreed to a sentence of five years' imprisonment, as well as a recommendation from the court that defendant participate in the Department of Corrections (DOC) impact incarceration program. Defendant signed a consent form to participate in the impact incarceration program in which she attested that she was physically able to participate in the program, had no mental disorder or disability, and that she was aware of the provisions of the program. The court asked defendant if she understood that her prison term would be "suspended unless and until [defendant] complete[d] the Impact Incarceration Program" and if defendant failed to do so she would have to serve her term of imprisonment. Defendant responded that she understood. The court accepted the plea agreement, sentenced defendant to the agreed terms and made a recommendation that defendant participate in the impact incarceration program.

¶ 6 Subsequently, defendant filed a *pro se* postconviction petition which advanced to a third-stage evidentiary hearing. Defendant's petition alleged that the DOC denied her entry into the impact incarceration program because she failed her mental health evaluation. Defendant asserted that plea counsel provided ineffective assistance for advising her that she would likely be accepted into the program even though counsel knew that she suffered from mental illnesses. Defendant alleged that the State had initially offered a four-year prison term. Defendant argued

that she would have accepted the State's first offer of a four-year prison term had counsel advised her that she would not be admitted into the impact incarceration program.

¶ 7 At the third-stage evidentiary hearing, defendant testified that plea counsel informed her that the State had offered a plea bargain in which she would serve four years' imprisonment. Defendant asked counsel to see if the State would offer impact incarceration. After speaking with the State, counsel informed defendant that the State offered a five-year sentence with impact incarceration. According to defendant, she then told counsel that she suffered from posttraumatic stress disorder, bipolar disorder, and anxiety and she was taking medication. Defendant wanted to know if her diagnoses would impact her ability to participate in impact incarceration. Defense counsel asked defendant if she had suffered from any past or present hallucinations. Defendant said that she had not, and counsel told her that as long as she did not hear or see things, she would likely be accepted into the impact incarceration program. Defendant believed that once the judge ordered impact incarceration, she was automatically admitted into the program. Defendant acknowledged that she signed the consent to participate in the impact incarceration program in which she attested that she did not suffer from any mental illnesses. However, she claimed that she did not read the consent form. Defendant was ultimately denied entry into the impact incarceration program. Defendant testified she would not have pled guilty had she known that she would not be accepted into the impact incarceration program.

¶ 8 Plea counsel, Sam Snyder, represented defendant during the plea proceedings. Snyder testified that when he first spoke with defendant, she was able to communicate with him competently, and behaved in a way that he found appropriate. Snyder was not concerned as to defendant's fitness to plead.

¶ 9 According to Snyder, the State initially offered defendant a five-year sentence. However, defendant asked Snyder to negotiate a sentence that would allow her to participate in the impact incarceration program. When the State agreed to offer impact incarceration, Snyder discussed the eligibility requirements with defendant. During the discussion, defendant confirmed to Snyder that she had mental illnesses and wanted to know if that would affect her ability to participate in the impact incarceration program. Snyder asked defendant if she had any active hallucinations in the past or present. Defendant responded that she did not suffer from hallucinations. Snyder told defendant that as long as she did not suffer from hallucinations, she would likely be admitted into the program.

¶ 10 Snyder stated that he was familiar with the requirements for acceptance into the impact incarceration program. Snyder was aware that the impact incarceration eligibility requirements precluded inmates who suffered from mental illnesses from participating in the program. However, the statute did not define which illnesses would bar an inmate from participating. Snyder did not believe that the statute automatically barred an inmate with a mental illness. Rather, that determination was left to the DOC. Snyder, therefore, did not believe that defendant would be disqualified from participating in impact incarceration simply because she suffered from a mental illness.

¶ 11 According to Snyder, he told defendant that the court only recommended participation in impact incarceration and it was never guaranteed that an inmate would be admitted. Snyder believed most inmates that were recommended actually did participate, but it was never guaranteed. In Snyder's opinion, defendant was eligible for impact incarceration. Snyder would not have recommended the plea agreement if he believed she would not be eligible. Snyder did not communicate with the DOC regarding defendant's eligibility prior to defendant's plea.

Snyder did not ask the DOC if defendant would be eligible, because defendant's eligibility depended on the evaluations performed by the DOC.

¶ 12 Next, the parties stipulated to the admission of a letter from the DOC which stated that defendant "was not admitted to the bootcamp (Impact Incarceration Program) because she was not cleared by mental health professionals to do so."

¶ 13 Following the third-stage hearing, the circuit court found that plea counsel did not perform deficiently and defendant was not prejudiced. The court based this finding on the fact that defendant was aware that the sentencing order merely recommended that defendant participate in the impact incarceration program. The court also found that although counsel told defendant that he believed that she would likely be cleared by the mental health evaluators to participate, counsel informed defendant that the determination was ultimately left to the DOC. Therefore, the court denied defendant's postconviction petition.

¶ 14 ANALYSIS

¶ 15 On appeal, defendant contends that the circuit court erred in denying her postconviction petition. We will not reverse the circuit court's decision following a third-stage evidentiary hearing on a postconviction petition where fact finding and credibility determinations are involved unless the decision is manifestly erroneous. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). " 'Manifest error' is defined as 'error which is "clearly evident, plain, and indisputable." ' " *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009) (quoting *People v. Morgan*, 212 Ill. 2d 148, 155 (2004), quoting *People v. Johnson*, 206 Ill. 2d 348, 360 (2002)). "Thus, a decision is manifestly erroneous when the opposite conclusion is clearly evident." *People v. Coleman*, 2013 IL 113307, ¶ 98.

¶ 16 Defendant argues that she is entitled to postconviction relief because her plea counsel provided ineffective assistance. Defendant contends that counsel was ineffective for failing to advise her that she would likely be accepted into the DOC impact incarceration program. “To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance was deficient and that the deficient performance prejudiced the defendant.” *People v. Colon*, 225 Ill. 2d 125, 135 (2007) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Upon review, we find the circuit court did not err in denying defendant’s postconviction petition, because defendant failed to establish that counsel performed deficiently. *Id.* (failure to satisfy either prong of this test precludes a reviewing court from concluding that counsel was ineffective).

¶ 17 The standard for competence in the context of a guilty plea is not whether counsel’s advice was correct, but whether plea counsel’s advice was within the range of competence demanded of attorneys in criminal cases. *People v. Pugh*, 157 Ill. 2d 1, 14 (1993). When plea counsel’s advice is based on a misapprehension of the law, it falls outside the range of competence demanded of attorneys in criminal cases. See *id.* at 19. If plea counsel affirmatively provides “unequivocal, erroneous, misleading representations” about the consequences of a plea, this may amount to ineffective assistance that renders a defendant’s plea involuntary. *People v. Correa*, 108 Ill. 2d 541, 552 (1985).

¶ 18 Here, counsel testified that he was familiar with the eligibility requirements for participation in the impact incarceration program. He was aware that defendant did suffer from some mental disorders, but based on his conversations with defendant he did not believe that she was automatically disqualified from the impact incarceration program. Counsel believed this to be true because the statutory eligibility requirements do not categorically bar inmates with

mental illnesses from participation. The statutory eligibility requirements for impact incarceration includes, in relevant part, that “[t]he person must not have any mental disorder or disability that would prevent participation in the impact incarceration program.” 730 ILCS 5/5-8-1.1(b)(6) (West 2012). Counsel’s belief that defendant would not be automatically barred is reasonable, given that the statute itself does not categorically bar inmates with mental illnesses. Rather, the statute leaves the discretion with the DOC to determine whether an inmate’s mental illness would prevent the inmate from participating in the program. Thus, we find counsel’s advice was not based on a misapprehension of the law.

¶ 19 Moreover, the only evidence defendant presented regarding her rejection from the impact incarceration program is a letter from the DOC stating she “was not cleared by mental health professionals to do so.” She failed to present any evidence as to why she was not cleared by the mental health professionals. She also failed to present any evidence that the DOC had a blanket policy denying inmates from participating in the impact incarceration program solely because the inmate was diagnosed with a mental disorder. In other words, we do not know if defendant was denied entry into the impact incarceration program solely because of her diagnoses. Therefore, defendant failed to demonstrate that counsel’s advice was clearly erroneous. At the third-stage evidentiary hearing, defendant bears the burden of making a substantial showing of a constitutional violation. *Pendleton*, 223 Ill. 2d at 473. Given this failure, we find that counsel did not perform deficiently.

¶ 20 The fact that defendant was ultimately denied entry into the impact incarceration program because she was not cleared by the DOC mental health evaluators does not change the result. Although counsel believed that defendant was eligible, he informed defendant that including impact incarceration in the sentencing order was merely a recommendation, and defendant did

risk being rejected from the program. Following the third-stage postconviction hearing, the circuit court found that defendant was made aware of the fact that she was only recommended to participate in the program. Given defendant's testimony at the third-stage hearing, we cannot say the court's finding is against the manifest weight of the evidence. While defendant testified that she believed that the court would decide if she could participate, she acknowledged asking counsel whether having a mental disorder would affect her ability to participate in the program. Defendant's testimony demonstrates that she was aware that she was not guaranteed entry into the impact incarceration program, but would have to meet certain eligibility requirements to participate. Nevertheless, she chose to accept the guilty plea despite knowing that she could be potentially denied participation due to her mental illnesses.

¶ 21

CONCLUSION

¶ 22

The judgment of the circuit court of Peoria County is affirmed.

¶ 23

Affirmed.