

NOT DESIGNATED FOR PUBLICATION

No. 125,005

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JACKSON BRYANT,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; FAITH A.J. MAUGHAN, judge. Opinion filed July 28, 2023.
Affirmed.

Korey A. Kaul, of Kansas Appellate Defender Office, for appellant.

Julie A. Koon, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before COBLE, P.J., GARDNER and CLINE, JJ.

PER CURIAM: Jackson Bryant pleaded guilty to charges stemming from a robbery and murder he committed in 2013. After sentencing, Bryant moved for relief under K.S.A. 60-1507, arguing his trial counsel was ineffective for failing to further investigate his mental health history and seek withdrawal of his plea or resentencing on that basis. After the district court's summary dismissal of Bryant's motion was reversed on appeal, the district court held an evidentiary hearing and denied Bryant's motion, finding that Bryant's trial counsel's performance was not objectively unreasonable. Bryant now appeals again, this time arguing the ruling was not supported by substantial competent

evidence. After a thorough review of the record, we find no error and affirm the district court's decision.

FACTS

Bryant pleaded guilty under a plea agreement to second-degree murder, attempted aggravated robbery, criminal possession of a firearm by a convicted felon, two counts of criminal damage to property, and aggravated robbery based on events in November 2013.

After Bryant and the State submitted mitigating and aggravating factors to the district court at sentencing, the court followed the plea agreement and imposed the maximum sentence for each count with the sentences all running consecutive, for a controlling term of 757 months in prison and 12 months in jail.

Roughly a year later, Bryant filed a K.S.A. 60-1507 motion alleging, among other things, that his trial counsel was ineffective for failing to investigate his mental health history. The district court summarily denied this motion and Bryant appealed. We reversed the district court's summary dismissal of Bryant's motion, finding that the district court had failed to issue findings of fact and conclusions of law in support of its ruling. *Bryant v. State*, No. 116,020 (order filed April 27, 2017).

The Evidentiary Hearing

On remand, the district court held a full evidentiary hearing on Bryant's K.S.A. 60-1507 motion, where Bryant, his trial counsel, and the prosecutor all testified.

In describing his history of mental health issues, Bryant testified that he was bipolar and had attempted suicide twice at age 12 by overdosing on medication while at school. He stated that he received inpatient care for short periods after each attempt, was

placed on medication, and began receiving weekly counseling. He also stated that following his incarceration as a juvenile at age 14, he was placed in several psychiatric and residential treatment facilities. When he was released from custody at age 19, he did not continue any mental health treatment. He said that at the time of the events underlying his current conviction, he had been without mental health treatment for roughly five or six months.

He said that since being incarcerated, however, he had been on medication, which helped with impulse control and his suicidal tendencies.

Bryant stated that at time he committed the offenses here, he was "going through extreme mania. Like, nothing was real." Elaborating further, he stated that "every time I had a thought it became an action automatically. Things didn't seem real. I wasn't in touch with everything that was going on. Like, the impression I was under wasn't always a reality of the situation." He added that during the pretrial period, "everything was a joke to me. Like, what was going didn't seem real, and I took it as a joke."

Bryant's trial counsel testified that Bryant told her that he wanted to plead guilty right away in their first meeting. When she asked Bryant whether he had mental health issues, he revealed that he had a bipolar diagnosis for which he had taken prescription medication in the past but that he was not currently taking any. He did not disclose his history of hospitalization or self-harming behavior.

Trial counsel stated that she did not have any concerns about Bryant's mental health based on her interactions with him and never had any reason to question his competency. She added that she could not recall a situation where a bipolar diagnosis had supported a mental disease or defect defense.

Trial counsel also testified that Bryant never told her that things did not seem real while he was committing the offenses, but he did portray the persona as if the proceedings were no big deal, as if they were a joke to him. She noted that Bryant gave her other reasons behind his actions than his mental health. And she pointed out the shooting underlying Bryant's murder charge was captured on surveillance video, and Bryant gave a full confession to law enforcement that was very detailed and matched the video footage.

Likewise, trial counsel testified that Bryant's description to her of the events matched the video closely and indicated that Bryant understood the nature of his actions in the immediate aftermath of the shooting. She explained that this undercut the viability of any potential mental disease or defect defense. And she explained that there were no signs that Bryant's mental health issues justified mentioning it as a mitigating factor at sentencing.

Trial counsel also noted that she asks every client whether they have ever had any mental health treatment. She said it was not unusual for her clients to have bipolar disorder or other mental health issues. And she stated that, because of this prevalence, the fact that a client has bipolar disorder does not automatically trigger an investigation into a mental health defense.

Finally, the prosecutor from Bryant's trial stated that in Bryant's statement to police on the day of the shooting, Bryant explained that he went to the service station to conduct a robbery and it turned into a killing because someone in the store attempted to interfere with the robbery. The prosecutor testified that Bryant's explanation for why he killed the victim was that heroes have to die.

The District Court Denies Bryant's Motion

Bryant's K.S.A. 60-1507 counsel argued that trial counsel was ineffective for failing to investigate Bryant's mental health because there was no consideration of a possible mental health defense and no presentation of mental health as a mitigating factor at sentencing. He also claimed that trial counsel was put on notice that Bryant had mental health issues that needed to be investigated since Bryant had been involved in prior criminal cases and because a rational person would not be involved in such a horrific crime. Bryant's 60-1507 counsel argued that this failure prejudiced Bryant, as investigation of Bryant's psychiatric issues might have revealed the availability of a diminished-capacity defense and, at the very least, would have provided mitigating circumstances for sentencing.

The district court found that trial counsel's performance did not fall below the required standard of care and denied Bryant's K.S.A. 60-1507 motion. In support of its finding that trial counsel was not ineffective for failing to further investigate Bryant's mental health, the district court relied on several facts, including: (1) Bryant told his attorney about his bipolar disorder but never told his attorney about his hospitalizations, self-harming behaviors, or therapy; (2) Bryant told his attorney during their first meeting that he wanted to plead guilty; (3) trial counsel testified that she had no concerns about Bryant's mental health during her visits and nothing suggested to her that there was any reason to doubt his competency; and (4) trial counsel testified it was not unusual for her clients to have mental health issues.

ANALYSIS

Bryant makes the same arguments on appeal that he made below in support of his K.S.A. 60-1507 motion. Again, he claims his counsel was ineffective for failing to

investigate his mental health issues and then use those issues to mitigate his sentence or defend against the charged crimes.

Standard of Review

Where, as here, the district court conducts a full evidentiary hearing and makes findings of fact and conclusions of law in ruling on a prisoner's K.S.A. 60-1507 motion, appellate courts apply a mixed standard of review as to these findings of fact and conclusions of law. *Bellamy v. State*, 285 Kan. 346, 355, 172 P.3d 10 (2007).

An appellate court must give deference to the district court's findings of fact, accepting as true the evidence and any inferences that support or tend to support the court's findings. Under this standard, an appellate court must determine whether the district court's factual findings are supported by substantial competent evidence and whether those findings are sufficient to support the court's conclusions of law. The court's conclusions of law and its ultimate decision to grant or deny the K.S.A. 60-1507 motion are reviewed using an *de novo* standard. *Bellamy*, 285 Kan. at 355.

Substantial competent evidence is that which possesses both relevance and substance and which furnishes a substantial basis in fact from which the issues can reasonably be resolved. In reviewing a district court's factual findings for substantial competent evidence, appellate courts do not reweigh evidence, pass on the credibility of witnesses, or resolve conflicts in the evidence. *Khalil-Alsalaami v. State*, 313 Kan. 472, 486-87, 486 P.3d 1216 (2021).

Ineffective Assistance of Counsel

To support a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was deficient and (2) the defendant was

prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Chamberlain v. State*, 236 Kan. 650, 656-57, 694 P.2d 468 (1985).

Whether Counsel's Performance Was Deficient

Under the first prong of the *Strickland* test, a defendant must show that counsel's representation fell below an objective standard of reasonableness, considering all the circumstances. Judicial scrutiny of counsel's performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Furthermore, appellate courts must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Edgar v. State*, 294 Kan. 828, 838, 283 P.3d 152 (2012).

Attorneys have discretion in making strategic and tactical decisions about trial. But when counsel lacks the information to make an informed decision due to the inadequacies of his or her investigation, any argument of trial strategy is inappropriate. *Thompson v. State*, 293 Kan. 704, 716, 270 P.3d 1089 (2011).

Bryant argues that his trial counsel's failure to investigate his mental health condition and advise him of a potential mental disease or defect defense was objectively unreasonable. He claims that, despite his trial counsel's knowledge that he was bipolar, she did not consider whether he may have been having a manic episode that would have negated the required intent for murder or investigate whether he had previously been hospitalized. And he argues that his trial counsel's decision to not investigate a potential mental disease or defect defense cannot be described as a strategic decision, as she lacked the information to make an informed decision due to the inadequacies of her investigation.

Bryant argues that he may have had a legitimate defense to his first-degree murder charge if his mental disease or defect negated the intent to kill required as an element of that charge. See *State v. McLinn*, 307 Kan. 307, 319-20, 409 P.3d 1 (2018) (under K.S.A. 2013 Supp. 21-5209, a criminal defendant may present a mental disease or defect defense to establish he or she lacked the culpable mental state required as an element of the charged crime). In support, he notes that he testified during the K.S.A. 60-1507 hearing that when he committed the acts underlying his convictions, he was unmedicated and suffering from an extreme manic episode and things did not seem real to him.

Bryant contends that had his trial counsel investigated further, she would have learned of his hospitalizations and that he was suffering a manic episode at the time of the offenses, and she would have been able to advise him that the jury might find that his mental illness prevented him from forming an intent to kill.

The district court's ruling rested on a finding that there were no indicators that counsel needed to investigate Bryant's mental health further, since he merely informed her that he had bipolar disorder without mentioning that he was undergoing a manic episode at the time he committed the offenses, and trial counsel stated that many of her clients had mental health issues.

These factual findings are supported by substantial competent evidence. Trial counsel testified that while Bryant informed her of his bipolar diagnosis and she asked him about his mental health history, he did not inform her of his previous hospitalization, self-harming behavior, or that he was suffering a manic episode during the time of the offenses. She also stated that many of her clients had mental health issues, Bryant gave no indicators that he was undergoing psychotic episodes or was otherwise incompetent, and his description of the events indicated that he could have formed the specific intent necessary to support a conviction at the time he committed the offenses. Accepting these statements and the inferences that can be drawn from them as true, this evidence supports

the district court's finding that the circumstances would lead a reasonable attorney to conclude that further investigation was not necessary.

Given this factual finding, the district court's legal conclusion that counsel's conduct was not objectively unreasonable is correct.

Furthermore, Bryant's allegation that a mental disease or defect defense would have been available to him is conclusory. He does not explain the basis for this statement other than suggesting that he *might not* have been able to form the necessary intent based on his testimony at the evidentiary hearing. Bryant's lack of explanation or support for this assertion further undercuts his argument that additional investigation was required.

Accordingly, we find no error in the district court's finding that trial counsel's performance was not objectively unreasonable. Since Bryant fails to satisfy this prong of the *Strickland* test, we need not address his arguments as to whether he was prejudiced by his trial counsel's allegedly deficient performance. See *Strickland*, 466 U.S. at 687.

Affirmed.