

SUPREME COURT OF GEORGIA

Arnold v. State

292 Ga. 95 (2012) · Decided November 19, 2012

SUMMARY

The Georgia Supreme Court affirmed the denial of Darchelle Renee Arnold’s motion to withdraw her guilty plea to two counts of felony murder and one count of aggravated assault. The court held that Arnold failed to establish ineffective assistance of counsel or manifest injustice resulting from the trial court’s failure to advise her on the record of the mandatory minimum sentence.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Presiding Justice; All the Justices
JURISDICTION	Georgia
DECIDED	November 19, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a motion to withdraw a negotiated guilty plea.
STANDARD OF REVIEW	The appellate court defers to the lower court's factual findings unless clearly erroneous and reviews its legal conclusions de novo.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Darchelle Renee Arnold v. State

TOPICS

- ineffective assistance
- plea bargaining
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- Criminal procedure
- Guilty pleas
- Ineffective assistance of counsel
- Appellate review

QUESTIONS PRESENTED

1. Whether defense counsel provided ineffective assistance by allegedly misadvising Arnold about parole eligibility and her ability to withdraw the guilty plea after sentencing.

2. Whether Arnold's guilty plea was involuntary or resulted in a manifest injustice because the trial court did not advise her on the record of the mandatory minimum sentence for felony murder under Uniform Superior Court Rule 33.8.

HOLDINGS

1. A defendant challenging a guilty plea based on ineffective assistance must show deficient performance and prejudice, with prejudice established by a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on trial. Arnold failed to establish deficient performance because the trial court credited counsel's testimony that he correctly advised her about parole eligibility and did not tell her she could withdraw the plea at any time.
2. Arnold was not entitled to withdraw her guilty plea to correct a manifest injustice even though the trial court did not advise her on the record of the mandatory minimum sentence, because the record showed that she knowingly, intelligently, and voluntarily waived her rights and counsel had correctly advised her concerning the length of her sentence.

KEY QUOTATIONS

“The prejudice component in the context of a guilty plea, however, is met by showing that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” (96)

“It follows that appellant has not demonstrated she should be permitted to withdraw her plea to correct a manifest injustice and that the court did not err in denying appellant’s motion to withdraw her guilty plea.” (97)

FACTUAL BACKGROUND

Arnold pleaded guilty pursuant to a negotiated plea to two counts of felony murder and one count of aggravated assault arising from the shootings of two victims and the wounding of another. She claimed counsel incorrectly advised her about parole eligibility and the ability to withdraw her plea after sentencing. She also claimed the plea was involuntary because the trial court did not advise her on the record of the mandatory minimum sentence for felony murder. The trial court credited counsel's testimony, found his performance reasonable, and denied withdrawal of the plea.

PROCEDURAL HISTORY

Arnold was indicted for two counts of malice murder, four counts of felony murder, three counts of armed robbery, and six counts of aggravated assault. Under a negotiated plea, she pleaded guilty to two counts of felony murder and one count of aggravated assault and received two concurrent life sentences plus twenty years of probation. She later moved to withdraw her guilty plea based on ineffective assistance of counsel and alleged involuntariness; after a hearing, the trial court denied the motion, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Hill v. Lockhart, 474 U.S. 52 (1985)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Heath, 277 Ga. 337, 338 (588 S.E.2d 738) (2003)
- Moore v. State, 278 Ga. 397 (2) (603 S.E.2d 228) (2004)
- Floyd v. State, 293 Ga. App. 235, 236 (2) (666 S.E.2d 611) (2008)
- Britt v. Smith, 274 Ga. 611, 614 (556 S.E.2d 435) (2001)
- State v. Evans, 265 Ga. 332, 336 (454 S.E.2d 468) (1995)
- Adams v. State, 285 Ga. 744, 748 (683 S.E.2d 586) (2009)
- Maddox v. State, 278 Ga. 823, 826 (4) (607 S.E.2d 587) (2005)

OPINION

THOMPSON, J.

THOMPSON, Presiding Justice. Via indictment, appellant, Darchelle Renee Arnold, was charged with two counts of malice murder, four counts of felony murder, three counts of armed robbery, and six counts of aggravated assault, in connection with the shooting deaths of two victims and the wounding of another. Pursuant to a negotiated plea, appellant pled guilty to two counts of felony murder and one count of aggravated assault.

She was sentenced to two concurrent terms of life for each felony murder count and twenty years on probation, to be served consecutively, for aggravated assault. Appellant subsequently filed a motion to withdraw her guilty plea, claiming: (1) ineffective assistance of counsel, and (2) she did not enter a knowing, voluntary, and intelligent plea; Following a hearing, the motion was denied, and this appeal followed.

Finding no error, we affirm. *961. Appellant contends defense counsel was ineffective because defense counsel erroneously informed her she would be eligible for parole within the first 30 years of her imprisonment if she accepted the plea offer. She also asserts defense counsel mistakenly told her she could withdraw her guilty plea any time after sentencing.

Summing up, appellant claims that, but for the erroneous advice of defense counsel, she would not have entered a guilty plea. In Hill v. Lockhart, 474 U. S. 52 (106 SC 366, 88 LE2d 203) (1985), the United States Supreme Court established the test for reviewing claims of ineffective assistance of counsel in the context of a guilty plea.

In so doing, the Supreme Court held that a defendant who pleads guilty and who seeks to overturn his conviction because of counsel's errors must meet the now familiar two-part test of Strickland v.

Washington[, 466 U. S. 668 (104 SC 2052, 80 LE2d 674) (1984)] — deficient performance and prejudice.

The analysis of counsel's performance is similar whether in the context of a trial or a guilty plea. The prejudice component in the context of a guilty plea, however, is met by showing that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. (Punctuation and footnotes omitted.)

State v. Heath, 277 Ga. 337, 338 (588 SE2d 738) (2003). In reviewing an ineffective assistance of counsel claim, “ ‘an appellate court gives deference to the lower court's factual findings, which are upheld unless clearly erroneous; the lower court's legal conclusions are reviewed de novo. [Cit.]’ ” Moore v. State, 278 Ga. 397 (2) (603 SE2d 228) (2004). Defense counsel testified he correctly advised appellant that she would not be eligible for parole until she served 30 years of her life sentence.

He also testified he did not tell appellant she could withdraw her guilty plea at any time. Thus, in rejecting appellant's ineffective assistance claim and finding that defense counsel's performance fell well within the range of reasonable professional assistance, the trial court implicitly credited defense counsel's testimony. Cf. Floyd v. State, 293 Ga. App.

235, 236 (2) (666 SE2d 611) (2008) (counsel rendered ineffective assistance by erroneously advising defendant he would be eligible for parole after serving 90 percent of mandatory minimum sentence on aggravated child molestation charge). Giving due deference to the trial court's factual findings, Moore v. State, supra, we conclude that appellant failed to meet her burden of showing deficient performance on the part of defense counsel.

Decided November 19, 2012. Louis M. Turchiarelli, for appellant. 2. Appellant asserts her guilty plea was involuntary because the lower court failed to inform her on the record of the mandatory minimum sentence for the charge of felony murder in compliance with Uniform Superior Court Rule 33.8.

We disagree. In determining whether a guilty plea was voluntary and knowing, an appellant need not be specifically advised of each and every right set forth in Uniform Superior Court Rule 33.8. Britt v. Smith, 274 Ga. 611, 614 (556 SE2d 435) (2001).

In addition, even if an appellant enters a plea without being advised of his rights by the court, he must still prove that the withdrawal of the plea is required to correct a manifest injustice. State v. Evans, 265 Ga. 332, 336 (454 SE2d 468) (1995).

The test for manifest injustice will by necessity vary from case to case, but it has been said that withdrawal is necessary to correct a manifest injustice if, for instance, a defendant is denied

effective assistance of counsel, or the guilty plea was entered involuntarily or without an understanding of the nature of the charges. *State v. Evans*, 265 Ga. at 336.

Here, the record of the guilty plea hearing shows appellant knowingly, intelligently, and voluntarily waived her rights. Furthermore, although the trial court did not inform appellant of the mandatory minimum sentence for the charges to which she was entering a guilty plea, as we noted in Division 1, counsel's testimony that he correctly advised appellant concerning the length of her sentence was deemed credible by the trial court.

It follows that appellant has not demonstrated she should be permitted to withdraw her plea to correct a manifest injustice and that the court did not err in denying appellant's motion to withdraw her guilty plea. See *Adams v. State*, 285 Ga. 744, 748 (683 SE2d 586) (2009); *Maddox v. State*, 278 Ga. 823, 826 (4) (607 SE2d 587) (2005). Judgment affirmed. All the Justices concur.

Patrick H. Head, District Attorney, John R. Edwards, Anna G. Cross, Jason R. Samuels, Assistant District Attorneys, Samuel S. Olens, Attorney General, Paula K. Smith, Senior Assistant Attorney General, Clint C. Malcolm, Assistant Attorney General, for appellee.