

MISSOURI COURT OF APPEALS

Hazen v. State

694 S.W.2d 899 (Mo. App. 1985) · Decided July 23, 1985

SUMMARY

The Missouri appellate court affirmed the denial of Gerald and Charles Hazen’s Rule 27.26 motions to vacate their sentences. The court upheld findings that their guilty pleas were knowing and voluntary, their jointly retained counsel had no disqualifying conflict, and their claims of coercion and ineffective assistance were unsupported by the record.

CASE DETAILS

COURT	Missouri Court of Appeals
WRITING FOR THE COURT	Greene, Judge; Titus, P.J.; Flanigan, J.
JURISDICTION	Missouri
DECIDED	July 23, 1985
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gerald Hazen and Charles Hazen appealed the denial of their separate Missouri Rule 27.26 motions to vacate their sentences after an evidentiary hearing.
STANDARD OF REVIEW	Review of the denial of a Rule 27.26 motion is limited to whether the motion court's findings, conclusions, and judgment are clearly erroneous. When an evidentiary hearing resolves contested factual issues, the motion court determines witness credibility and resolves conflicts in testimony.
PRECEDENTIAL VALUE	published Missouri Court of Appeals opinion
PARTIES	Gerald Hazen, Charles Hazen v. State

TOPICS

- post-conviction relief
- ineffective assistance
- plea bargaining
- appellate procedure
- standard of review

PRACTICE AREAS

- Missouri post-conviction criminal procedure
- guilty pleas
- ineffective assistance of counsel
- appellate review

QUESTIONS PRESENTED

1. Whether the motion court's findings that the guilty pleas were knowingly and voluntarily entered and were not the product of coercion or undue influence were clearly erroneous.
2. Whether the attorney's joint representation of Gerald and Charles created a conflict of interest warranting post-conviction relief.
3. Whether counsel rendered ineffective assistance through coercion, poor advice, or inadequate representation.
4. Whether the motion court's factual findings and conclusions denying the Rule 27.26 motions were clearly erroneous.

HOLDINGS

1. An appellate court reviewing the denial of a Rule 27.26 motion determines only whether the motion court's findings, conclusions, and judgment are clearly erroneous.
2. When a Rule 27.26 evidentiary hearing involves contested facts, the motion court determines witness credibility and resolves conflicts in testimony.
3. The movants were not entitled to vacatur because the record supported findings that their guilty pleas were knowingly and voluntarily entered, were not coerced, and were made with competent and adequate representation.
4. Joint representation did not establish a disqualifying conflict of interest on the record presented because neither the State nor either movant expressed an intent to use one defendant as a witness against or on behalf of the other.

KEY QUOTATIONS

“Appellate review of the denial of a Rule 27.26 motion is limited to a determination of whether the findings, conclusions and judgment of the motion court are clearly erroneous.” (694 S.W.2d at 900)

“The motion judge had a right to disbelieve the self-proclaimed liars, and evidently did so.” (694 S.W.2d at 901)

FACTUAL BACKGROUND

Gerald and Charles Hazen participated in the robbery of a service station, during which Charles assaulted the attendant with a rubber mallet. Gerald pleaded guilty to reduced second-degree burglary charges and received ten years, while Charles pleaded guilty to first-degree robbery and received fifteen years. In their post-conviction motions, they alleged that their jointly representing attorney coerced their pleas, had a conflict of interest, and rendered ineffective assistance. At the evidentiary hearing, both attempted to explain their plea-hearing admissions by asserting that counsel had instructed them to lie.

PROCEDURAL HISTORY

The two movants were jointly charged with first-degree robbery. Gerald pleaded guilty to reduced second-degree burglary charges and received a ten-year sentence; Charles pleaded guilty to first-degree robbery and received a

fifteen-year sentence. Neither took a direct appeal. Each later filed a Rule 27.26 motion alleging, among other things, coercion of guilty pleas, conflict of interest, and ineffective assistance of counsel. The motion court consolidated the proceedings, held an evidentiary hearing, denied both motions in separate judgments, and the Missouri Court of Appeals consolidated the appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- Lawrence v. State, 649 S.W.2d 263, 264 (Mo. App. 1983)
- Willen v. State, 648 S.W.2d 134, 136 (Mo. App. 1983)

OPINION

GREENE, J.

GREENE, Judge. Movants, Gerald Hazen and his father, Charles Hazen, were jointly charged with first degree robbery, § 569.020.1 Pursuant to a plea bargain agreement, Gerald entered a guilty plea to a reduced charge of second degree burglary, § 569.030, and received a 10-year sentence. Charles entered a guilty plea to the first degree robbery charge and was sentenced to 15 years' imprisonment.

No direct appeal was taken by either man. Both men actively participated in the robbery of a service station in Phelps County, during which Charles assaulted the station attendant with a rubber mallet. Each man later filed motions to vacate their sentences pursuant to Rule 27.26.

The motions, as amended, alleged a plethora of wrongs, including charges that the trial attorney who represented both men, coerced them into pleading guilty, had a conflict of interest in representing both men, and rendered ineffective assistance of counsel through the giving of poor advice concerning the case and the guilty pleas. At the movants' request, the motion court consolidated their cases and conducted an evidentiary hearing, after which it made written findings of fact and conclusions of law and entered separate judgments denying the 27.26 motions.

Both movants appealed, and we have consolidated their cases here. Appellate review of the denial of a Rule 27.26 motion is limited to a determination of whether the findings, conclusions and judgment of the motion court are clearly erroneous. Rule 27.26(j); Lawrence v. State, 649 S.W.2d 263, 264 (Mo.App.1983). Where, as here, an evidentiary hearing is held on contested fact issues, the credibility of witnesses and the resolution of conflicts in testimony are matters to be determined by the motion court.

Willen v. State, 648 S.W.2d 134, 136 (Mo.App.1983). The motion judge found that 1) the informations filed against both men, to which they entered guilty pleas, were valid, legal and sufficient,

2) that their attorney had no conflict of interest in representing both men as there was no intent expressed by the state, or either man, to use one man as a witness against or in behalf of the other, 3) their attorney did not threaten, coerce, or intimidate them into lying, or entering guilty pleas, and both men were adequately represented by competent counsel throughout all stages of the proceedings, 4) before entering their guilty pleas, both men were advised by the trial court and by their attorney as to the charges against them, the ranges of punishment that could be assessed, and their legal rights, 5) they understood the proceedings, the charges against them, the range of punishment, their constitutional and legal rights, and the effect and result of their pleas of guilty, 6) both guilty pleas were knowingly and voluntarily entered and were not the result of threats, coercion, or undue influence, 7) their testimony and statements given at the guilty plea hearings were true and correct, 8) no prior convictions of Charles were presented to, or considered by, the sentencing court and 9) there was no conspiracy to deny Charles a fair trial.

There is substantial evidence in the record to sustain each of these findings. In the transcript of their guilty pleas, as well as in their written petitions to the trial court requesting permission to plead guilty, both men acknowledged that they understood the charges against them, stated, in their own handwriting, the acts they had performed that were the basis of the robbery charges, asserted they knew the range of punishment that could be assessed if they pled guilty, acknowledged that their constitutional rights had been explained to them, stated they had not been coerced into pleading guilty, and indicated that they were satisfied with the services of their attorney and were pleading guilty to the charges because they were guilty of them.

Movants, at the motion hearing, attempted to explain away this evidence by saying they lied to the trial judge when they testified under oath at their guilty plea hearings and when they submitted their petitions to plead guilty. Their only explanation for the alleged perjured testimony was that their lawyer had told them to lie, which the attorney denied.

The motion judge had a right to disbelieve the self-proclaimed liars, and evidently did so. *901We have reviewed the record and determine that the motion court's findings, conclusions and judgments are supported by the record and are not clearly erroneous. Both judgments are affirmed. TITUS, P.J., and FLANIGAN, J., concur.. Unless otherwise indicated, all references to rules are to Missouri Rules of Court, V.A.M.R., and all references to statutes are to RSMo 1978, V.A.M.S.