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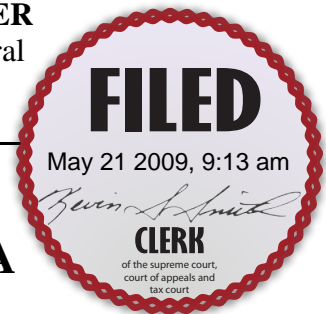
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**IN THE
COURT OF APPEALS OF INDIANA**



CORWIN STOEHR,)
)
Appellant-Petitioner,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

No. 55A04-0812-PC-700

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable G. Thomas Gray, Judge
Cause No. 55D01-0311-PC-309

May 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Corwin Stoehr appeals from the denial of his petition for post-conviction relief.

We affirm.

ISSUE

Whether the post-conviction court erred by finding that a sufficient factual basis supported Stoehr's guilty plea.

FACTS

On March 21, 2002, the State charged Stoehr with the murder¹ of William Draper. On or about November 6, 2002, Stoehr and the State entered into a plea agreement, whereby Stoehr agreed to plead guilty to the charge of murder and testify against his co-defendant, Stephen Rodgers. In return, the State agreed to dismiss the habitual offender allegation against him.

On November 6, 2002, the trial court held a guilty plea hearing, during which Stoehr acknowledged that he understood that he was being charged with murder and that in order to be guilty of that charge, he "must have on June 28, 2001, . . . knowingly kill[ed] William Draper." (Guilty Plea Hrg. Tr. 8).²

Stoehr then testified regarding the following facts. On June 28, 2001, he, Denise Knott, Rodgers, and Draper were driving from Morgan County to Indianapolis after picking up a washing machine at the home of Stoehr's mother. Rodgers was driving Stoehr's vehicle. Draper sat in the front passenger seat; Knott and Stoehr sat in the

¹ Ind. Code § 35-42-1-1.

² The transcript from the guilty plea hearing is included in the exhibit volume from the post-conviction hearing.

backseat. Rodgers and Draper began arguing because Rodgers believed that Draper had implicated him and Stoehr in several robberies. Stoehr then heard Draper say, ““Steve quit stabbing me.”” *Id.* at 18. Stoehr next saw Rodgers stab Draper “one time, really hard.” *Id.*

Rodgers then stopped the car, got out, went around to Draper’s side, and pulled Draper out of the car. Stoehr also exited the vehicle and saw Rodgers stab Draper “twice more in the chest.” *Id.* at 19. Stoehr then helped Rodgers move Draper into a field. Rodgers asked Stoehr whether Draper was dead, to which Stoehr replied that he did not know. Rodgers therefore “reached down and cut [his] throat . . . in the field.” *Id.* Stoehr, Rodgers and Knott returned to Indianapolis, where Rodgers disposed of the knife and several articles of his clothing.

Following Stoehr’s testimony, the following colloquy occurred:

MR. LITZ: All right, now, in order for you to be guilty of murder, we’ve also discussed it’s not necessary that you actually be the person who stabbed [Draper].

MR. STOEHR: Yes.

MR. LITZ: But that it is necessary in order for you to be convicted of murder that; number one, you have to know that at the time of the murder that by your actions you are helping in the commission of the murder. Do you understand that?

MR. STOEHR: Yes.

MR. LITZ: Are you telling the Judge that you did not have the ability to make your own reasoned decision as far as helping carry [Draper] into the field?

MR. STOEHR: I decided to help him. I don’t know how much of a physical threat I felt under at the time. It was a consideration.

....

MR. LITZ: [W]e're talking about whether or not there's a factual basis to accept your plea of murder. In order for you to be convicted of murder as a result of aiding in the commission of it . . . you have to admit that you knowingly assisted in the commission of the crime. Now, are you saying that you knowingly assisted in the commission of the crime?

MR. STOEHR: Well, I did after the fact. I helped him move the body. There was no plan to murder [Draper] as far as I know, therefore, I can't say that I helped him plan it or premeditate it.

MR. LITZ: Okay, that's not the issue.

....

MR. LITZ: All right, would you agree that by moving the body that you . . . knowingly assisted [Rodgers] in committing the crime of murder?

MR. STOEHR: Yes.

....

THE COURT: Now, just so I understand it you're saying that there were stab wounds made by Mr. Rodgers in the car?

MR. STOEHR: Yes.

THE COURT: And then somehow . . . Draper got out of the car. I don't know pulled out, fell out?

MR. STOEHR: [Rodgers] came around the car and dragged [Draper] out. He more or less fell

THE COURT: Okay.

MR. STOEHR: brought him, just let him fall as he drug him out.

THE COURT: And then you

MR. STOEHR: I believe [Draper] was dead before [Rodgers] got him out of the car.

THE COURT: And then you got out of the car on your own?

MR. STOEHR: Yes.

THE COURT: And . . . had a short . . . confrontation with Mr. Rodgers, and then you on your own agreed to help him move the body in an attempt to avoid detection?

MR. STOEHR: Yes, yeah once I helped him I tried to cover it up just as much even more than he did.

THE COURT: And that the throat wound was administered after you moved him in your presence?

MR. STOEHR: Yeah, I was standing five or six feet away. I could see that he didn't bleed. He was already dead.

. . . .

THE COURT: Do you admit that your concerted action . . . after the stabbing of Mr. Draper, whether he was dead or not at that time, was to conceal the body and make sure that he did die of his wounds?

MR. STOEHR: Yes.

THE COURT: Your [sic] not a medical doctor and you don't know if he was dead at the time you moved him or not?

MR. STOEHR: No, it's just my belief.

THE COURT: Okay, but you did voluntarily after . . . weighing your options decided to help Mr. Rodgers move the body to avoid detection?

MR. STOEHR: Yes.

THE COURT: And that you could have walked away from all of this and not aided Mr. Rodgers in furthering his plan or scheme, however you want to title it to murder and . . . deposit Mr. Draper?

MR. STOEHR: Yes.

THE COURT: You had the . . . full opportunity to just walk away and not make yourself involved at all?

MR. STOEHR: Yes.

THE COURT: And you voluntarily after weighing your options . . . decided to assist Mr. Rodgers in furthering the commission and avoidance of detection of the murder of William Draper?

MR. STOEHR: Yes.

THE COURT: Mr. Litz . . . as attorney for the defendant can you see any advantage to the defendant if this case were to proceed to trial?

. . . .

MR. LITZ: . . . I think that there are a number of . . . potential advantages to going to trial; the most obvious of which is complete acquittal. . . . I believed whole-heartedly that this was a case that was . . . as winnable as any murder case I ever had, but I also believe whole-heartedly and respect [Stoehr]'s decision, and I understand it completely.

THE COURT: Do you agree . . . in your professional legal opinion that [Stoehr] has admitted to murder as an accomplice here today?

. . . .

MR. LITZ: Yes, I do. I think that the factual basis is sufficient under the law.

THE COURT: Have you and your client . . . discussed this issue of the plea agreement at length?

MR. LITZ: Very much so.

THE COURT: All right, Mr. Stoehr, you've taken in consideration Mr. Litz's counsel and advice in this matter?

MR. STOEHR: Yes Sir.

THE COURT: It sounds like to be that this may be . . . did I mishear that this is your statement against advice of counsel?

MR. STOEHR: Well, like he said Mr. Litz afforded my decision. . . . I think he believed I had a . . . better chance than I did in trial

(Guilty Plea Hrg. Tr. 21-28).

The trial court accepted Stoehr's guilty plea on December 18, 2002. It then held a sentencing hearing and sentenced him to sixty years.

Stoehr, pro se, filed a petition for post-conviction relief on November 21, 2003.

His later-appointed counsel filed an amended petition on May 12, 2008, asserting:

During the factual basis part of the guilty plea hearing held on November 6, 2002, a factual basis was elicited through the testimony of Corwin Stoehr. However, from all of the facts and testimony there was never a factual basis supporting the crime of Murder. Stoehr never admitted or testified that he killed the victim or assisted Steve Rodgers in killing the victim. There were no facts or testimony showing Stoehr was guilty of being an accomplice under Indiana Code [section] 35-41-2-4. The evidence given during the factual basis at most proves Stoehr committed Assisting a Criminal under Indiana Code [section] 35-44-3-2.

(App. 51-52).

The post-conviction court held a hearing on Stoehr's amended petition on July 15, 2008. On September 30, 2008, it entered findings of fact and conclusions of law. It found, *inter alia*, that Stoehr "acknowledged to the Court that by his statement in Court at his guilty plea [hearing], he was admitting that he was an Accomplice to the act of Murder" and that "based on the examination of Stoehr, there is a factual basis for being an Accomplice to Murder under Indiana Code 35-41-2-4." (App. 71, 72). Accordingly, the post-conviction court denied Stoehr's petition.

DECISION

Stoehr asserts that he is entitled to post-conviction relief. A post-conviction petitioner bears the burden of establishing his claims by a preponderance of the evidence. *Lindsey v. State*, 888 N.E.2d 319, 322 (Ind. Ct. App. 2008), *trans. denied*. An appeal

from the denial of post-conviction relief constitutes an appeal from a negative judgment. *Id.* Thus, to prevail on appeal from the denial of post-conviction relief, the petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite to that reached by the post-conviction court. *Id.* In the post-conviction setting, conclusions of law receive no deference on appeal. *Id.* As to factual matters, the reviewing court examines only the probative evidence and reasonable inferences that support the post-conviction court's determination and does not reweigh the evidence or judge the credibility of the witnesses. *Id.*

Stoehr argues that the trial court failed to establish a factual basis for murder because he “did not stab Draper nor did he assist Rodgers with killing Draper.” Stoehr’s Br. at 7. Indiana Code section 35-35-1-3(b) provides that the trial court “shall not enter judgment upon a plea of guilty . . . unless it is satisfied from its examination of the defendant of the evidence presented that there is a factual basis for the plea.”

A factual basis exists when there is evidence about the elements of the crime from which a court could reasonably conclude that the defendant is guilty. Trial court determinations of adequate factual basis, like other parts of the plea process, arrive here on appeal with a presumption of correctness. We typically review claims of error about pleas under an abuse of discretion standard. This standard is also appropriate where, as here, the Petitioner asks that his plea be set aside through a motion for post-conviction relief on grounds that the factual basis was inadequate.

An adequate factual basis for the acceptance of a guilty plea may be established in several ways: (1) by the State’s presentation of evidence on the elements of the charged offenses; (2) by the defendant’s sworn testimony regarding the events underlying the charges; (3) by the defendant’s admission of the truth of the allegations in the information read in court; or (4) by the defendant’s acknowledgment that he understands the nature of the offenses charged and that his plea is an admission of the charges.

Oliver v. State, 843 N.E.2d 581, 588 (Ind. Ct. App. 2006) (internal citations omitted), *trans. denied*.

“The factual basis of a guilty plea need not be established beyond a reasonable doubt.” *Dewitt v. State*, 755 N.E.2d 167, 172 (Ind. 2001). “Rather, relatively minimal evidence can be adequate.” *Id.* Furthermore, in addition to proving the lack of a factual basis, the petition must also prove that he was prejudiced by the lack of a factual basis. *Id.*

An individual may be convicted for aiding, inducing, or causing another to commit a criminal offense. See I.C. § 35-41-2-4. “It is well established that a person can be charged as a principal and convicted as an accomplice.” *Specht v. State*, 838 N.E.2d 1081, 1092 (Ind. Ct. App. 2005) (quoting *Clark v. State*, 732 N.E.2d 1225, 1230 (Ind. Ct. App. 2000)), *trans. denied*. A person who aids or abets in the perpetration of a charged crime is as guilty as the actual perpetrator and “need not participate in each and every element of the crime in order to be convicted of it.” *Id.* at 1093 (quoting *Vandivier v. State*, 822 N.E.2d 1047, 1054 (Ind. Ct. App. 2005), *trans. denied*).

In determining whether a person aided another in the commission of a crime, we considered the following four factors: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant’s conduct before, during, and after the occurrence of the crime. *Garland v. State*, 788 N.E.2d 425, 431 (Ind. 2003).

In this case, Stoehr admitted to being present at the scene when Rodgers killed Draper. Second, he admitted companionship with Rodgers, including engaging in criminal activity with him prior to the murder. He also admitted to helping conceal Draper's body, "even more than [Rodgers] did," by helping to move the body into a field, ensuring that Draper would die of his wounds, and where Rodgers, without opposition by Stoehr, cut Draper's throat. (Guilty Plea Hrg. Tr. 25). Finally, Stoehr acknowledged that he understood the nature of the offense charged and that his plea was an admission of the charges.

As to Stoehr's contention that he maintained that he was innocent during the guilty plea proceedings, his testimony reveals that although he initially may have deliberated assisting Rodgers, he eventually did so voluntarily; moreover, we reiterate that he testified that "once [he] helped him [he] tried to cover it up just as much even more than [Rodgers] did." (Guilty Plea Hrg. Tr. 25). He also acknowledged during the guilty plea hearing that his actions were done in the furtherance of and to avoid detection of Draper's murder. We therefore find that the trial court established an adequate factual basis for Stoehr's guilty plea.

Affirmed.

BAILEY, J., and ROBB, J., concur.