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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-21-597

	Opinion Delivered June 1, 2022
JAMAL GOLATT APPELLANT	APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, WESTERN DISTRICT
V.	[NO. 16JCR-20-1410]
STATE OF ARKANSAS APPELLEE	HONORABLE CINDY THYER, JUDGE
	AFFIRMED

BRANDON J. HARRISON, Chief Judge

Jamal Golatt was pulled over and arrested outside his workplace in October 2020. Police were waiting for him: Golatt was a suspect in the death of Allie Hannah, who was found dead of a gunshot wound two days earlier, after she had reported Golatt as the perpetrator of a residential burglary. As Golatt was pulled over, he discarded a gun that had been stolen in that burglary. Officers found four ounces of marijuana, a scale, and twenty-one ecstasy pills in his car, along with another gun. One of the seized guns was linked through ballistics to the bullet that killed Hannah.

On December 17, Golatt was charged with purposeful first-degree murder, Ark. Code Ann. § 5-10-102 (Supp. 2021); simultaneously possessing drugs and firearms, Ark. Code Ann. § 5-74-106 (Repl. 2016); residential burglary, Ark. Code Ann. § 5-39-201(a) (Repl. 2013); and theft of a firearm, Ark. Code Ann. § 5-36-103(b)(3)(b) (Supp. 2021). An amended information

added a request to apply Ark. Code Ann. § 16-90-120 (Supp. 2021), a sentence enhancement for crimes committed with a firearm.

On April 21, Golatt pleaded guilty to first-degree murder and simultaneously possessing drugs and firearms. Both charges were Class Y felonies, and each one carried a maximum sentence of life imprisonment. Ark. Code Ann. § 5-4-401(a)(1) (Repl. 2013). The circuit court imposed the parties' recommended sentence, including a 480-month and consecutive 120-month sentence (with 120 months suspended) for the convictions, and a consecutive 120-month sentence enhancement under Ark. Code Ann. § 16-90-120. The other counts were nolle prossed.

Later, Golatt filed a timely Rule 37 motion through new counsel alleging ineffective assistance of counsel. These were the grounds, edited for clarity:

> 1. Counsel failed to take steps necessary for a reasonably complete and adequate investigation for facts to support the development and proof of issues to be litigated at trial:
>
> > (a) Failing to investigate threatening phone messages from Isabella Rose Hauptman, a potential witness against Golatt and co-defendant to the alleged crime, which could have been used to impeach any trial testimony from her.
> >
> > (b) Failing to investigate and preserve any video of the area where the shooting took place, which "would have shown that the shooting occurred either unknowingly or as self-defense" and supported Golatt's alleged statement to police (which is not reflected in the record on appeal) that "this was a self-defense situation."
> >
> > (c) Failing to investigate a shooting of Golatt's car that left a bullet hole, allegedly part of a setup by Hauptman and others to murder him because of a prior burglary, which he calls "essential to effectively represent [him] at trial", eliminating valuable evidence.
> >
> > (d) Failing to investigate and photograph a statement Hauptman allegedly wrote on a "pod" wall at the county jail that confirmed she was "setting up" Golatt, which Golatt's attorney promised but failed to do, causing the loss of valuable evidence.

> 2. Failing to consider or adequately address with Golatt the possibility of an affirmative defense of self-defense, in line with Golatt's alleged statement to police that he had felt threatened by Hannah, whom he describes as "a possible co-defendant" to the burglary and theft.[1]
>
> 3. Failing to adequately explain the implications of pleading guilty to first-degree murder or tell Golatt that "he could get the exact same sentence had he put the State's proof to the test at trial as provided by the Fifth and Sixth Amendments."
>
> 4. Failing to adequately prepare and execute necessary pretrial motions.
>
> > (a) Failing to ask for a bond hearing, given that, according to Golatt, he would likely have made bond and been better able to defend himself and less likely to plead guilty unreasonably.
>
> 5. Failing to reasonably and effectively communicate with Golatt during the pendency of his case.
>
> 6. Failing to provide Golatt with a copy of the discovery, without which Golatt says he could not knowingly waive his right to a trial because he would not have fully understood the evidence.

The circuit court denied the petition without a hearing. In an eight-page order with sixteen exhibits attached, the court dismissed the petition on three principal grounds. First, though Golatt's petition complains about his trial counsel's performance, he does not allege he would have gone to trial and not pleaded guilty if counsel had done otherwise. Second, Golatt confirmed in his plea colloquy that he was aware of the rights he would have if he went to trial and chose to give them up. Third, he confirmed that he had a full opportunity to discuss the case with his attorney and was satisfied with his counsel's advice, including "any defenses." The circuit court cited authority from the Arkansas Supreme Court that "when a defendant has told a trial court that he has been satisfied with the advice and representation of counsel, [the]

[1]Golatt contends in his petition that "[p]leading to a life sentence when facing a life sentence with at least a chance of a reasonable defense is indefensible" and there were no reasonable grounds for the plea "as the offer was life." Golatt was not sentenced to life. Indeed, he was not given the maximum sentence for either offense. He might be referring to the sentence enhancement, which requires serving 70 percent of a sentence of imprisonment. *See* Ark. Code Ann. § 16-90-120(e)(1)(A)(i).

defendant was not entitled to claim ineffective assistance in a Rule 37 petition." The court specifically addressed the allegation that Golatt's counsel failed to consider an affirmative defense of self-defense, citing the following exchange during the plea hearing:

> THE COURT: And I assume, Mr. Stoner, you all discussed any possible defenses?
>
> MR. STONER: We have, Your Honor. We discussed all the defenses in his case. We've also discussed all the liability and issues of his case. Based on all that information he has made the decision to take a plea offer.

The circuit court dismissed other allegations either as conclusory, meritless, or sufficiently contradicted by the record.

On appeal, Golatt argues that the court erred when it denied his petition without an evidentiary hearing, particularly when counsel did not provide him with discovery.

I. *Standard of Review*

When a petition for postconviction relief is clearly without merit, the circuit court may decide the petition without a hearing. *Wesley v. State*, 2019 Ark. 270, at 6–7, 585 S.W.3d 156, 161. It must specify "any parts of the files, or records that are relied upon to sustain the court's findings." Ark. R. Crim. P. 37.3(a). That is what the circuit court chose to do in this case. We review, for clear error, a circuit court's written findings that a petition is wholly without merit or that it is conclusive on the face of the record that the petitioner is entitled to no relief. *Wood v. State*, 2015 Ark. 477, at 3, 478 S.W.3d 194, 198.

II. *Discussion*

The only issue in a Rule 37 proceeding after a guilty plea is whether the plea was intelligently and voluntarily entered on the advice of competent counsel. *Wood*, *supra*. A petitioner who alleges after a guilty plea that his counsel's trial preparation was insufficient must allege "some direct correlation between counsel's deficient performance and the decision to

enter the guilty plea" or be procedurally barred from postconviction relief. *Id.* at 6, 478 S.W.3d at 199. And the burden is "entirely on a petitioner . . . to provide facts that affirmatively support a claim of prejudice." *Hogan v. State*, 2013 Ark. 223, at 4.

Does the record show, conclusively on its face, that Golatt is not entitled to any relief on his Rule 37 petition? The record the circuit court relied on includes some of the plea transcript. In one excerpt the State recited the facts it would present at trial, including the following:

> During an interview with the Defendant he admitted to shooting Ms. Hannah and admitted to breaking into the other victim's residence and stealing the guns along with other property.
>
> During the search of the vehicle, as I said, another firearm was located along with marijuana, scales and 21 ecstasy pills.

Golatt confirmed those facts. The circuit court asked, "And so you're admitting that you did have drugs in a vehicle where you had been along with firearms and that one of those firearms had been stolen from another residence; is that correct?" Golatt replied, "Yes, ma'am."

Nine transcript pages later, the colloquy continues, and Golatt admits shooting Hannah dead with a gun:

MR. GOLATT:	It was multiple girls that was textin me.
THE COURT:	Well, I want to be clear before we move forward, Mr. Golatt. Are you telling me that you took the gun and you shot and killed Ms. Hannah with that gun?
MR. GOLATT:	Yes, ma'am.
THE COURT:	And are you telling me that you were in a vehicle where there had been drugs and also a firearm?
MR. GOLATT:	Yes, ma'am.
THE COURT:	And so are you in fact pleading guilty to both of these offenses here today?

MR. GOLATT: Yes, ma'am.

Golatt's recital speaks for itself, though it can be said that he does not expressly admit *purposely* killing Hannah. A person commits first-degree murder if he "causes the death of another person" purposely, meaning it is his "conscious object" to do so. Ark. Code Ann. § 5-10-102(a)(2); § 5-2-202(1) (Repl. 2013). This intent can be proved with circumstantial evidence. *E.g.*, *Crews v. State*, 2017 Ark. App. 670, at 5, 536 S.W.3d 182, 186. If Golatt admitted that his purpose was to kill Hannah or that he acted in circumstances from which we could infer that purpose, there is no problem. Here, however, a pause is warranted because the record discloses little except that Hannah suffered one wound from a shot Golatt fired. No additional contextual facts are provided; the silence leaves us wanting to know more about the circumstances surrounding Hannah's death and Golatt's role in it.

Despite the pause, we hold that the circuit court did not clearly err when it denied Golatt's Rule 37 petition. Though three principal reasons were given, we will focus on one. This Rule 37 appeal can be decided on whether Golatt's guilty-plea statements about trial counsel, which were favorable, defeat his petition. The rule, which Golatt concedes, was stated in *Douthitt v. State*, 283 Ark. 177, 671 S.W.2d 746 (1984). *Douthitt* holds that a petitioner cannot receive Rule 37 relief for ineffective assistance attending a guilty plea if he had an opportunity to express dissatisfaction with counsel before the plea and failed to do so. This is strong medicine against a Rule 37 ineffective-assistance allegation. Golatt correctly notes, however, that *Douthitt* followed an evidentiary hearing. But *Douthitt* is not the supreme court's broadest or most recent application of that principle.

In *Polivka v. State*, a petitioner who received a heavy sentence after a guilty plea renewed allegations that he had received ineffective assistance at the plea stage. 2010 Ark. 152, 362

S.W.3d 918. Unlike in *Douthitt*, the circuit court in *Polivka* had not held an evidentiary hearing. *Id.* at 19, 362 S.W.3d at 930. It had not complied with Rule 37.3(a) either, because the circuit court's order denying the petition "made only general findings, and did not specify any parts of the record which it relied on." *Id.* The supreme court acknowledged that it is reversible error to deny a Rule 37 petition without an evidentiary hearing or Rule 37.3(a) findings. *Id.* Ultimately the court held that the face of the petition conclusively showed that no relief was warranted. *Id.*

Because the petitioner in *Polivka* (like Golatt) did not allege that "but for counsel's failure to prepare for trial, he would not have pled guilty," then he was "procedurally barred from making any arguments regarding his counsel's preparation for trial." *Id.* at 9, 362 S.W.3d at 925. And citing *Douthitt*, our supreme court also dismissed the allegation as meritless:

> During the plea colloquy, the court specifically asked Appellant whether he was satisfied with the advice and representation of his counsel, and Appellant answered in the affirmative. We have held that a defendant cannot claim ineffective assistance of counsel in a Rule 37 petition where the defendant failed to indicate that he or she was dissatisfied with counsel when the court gave the defendant the opportunity to do so.

Id. at 9–10, 362 S.W.3d at 925.

Here, the circuit court's inquiry (if somewhat general at times) demonstrated that Golatt knew his rights, had discussed "any defenses" with his counsel, and was satisfied with his counsel's advice. The posture and analysis in *Polivka* leave unclear whether a Rule 37 petitioner challenging a guilty plea can escape a warranty of satisfaction with counsel by demonstrating, for example, that his satisfaction rested on mistaken assumptions induced by constitutionally deficient advice. If not, Rule 37 will virtually always be unavailable to challenge a guilty plea because these inquiries are routine. However read, *Polivka* must require, at minimum, that when a defendant expresses satisfaction with counsel at a plea hearing, then any Rule 37 challenge to

a guilty plea alleging ineffective assistance of counsel must demonstrate with facts, not conclusions, that the petitioner did not know the grounds for the challenge when the plea was received.

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Golatt's petition is not wholly conclusory, and it touches a point about offense-related conduct about which this record is unclear. But the record does not show that he was prevented from raising issues about counsel's performance at his plea hearing. They have the ring of existing grievances renewed through new counsel. The circuit court therefore did not err, much less clearly err, in denying relief under Rule 37. Because we affirm on that point, we need not address the circuit court's other grounds for denying relief.

Affirmed.

VIRDEN and VAUGHT, JJ., agree.

The Claiborne Ferguson Law Firm, P.A., by: *Claiborne H. Ferguson*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Pamela Rumpz*, Sr. Ass't Att'y Gen., for appellee.