

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MARCH 1996 SESSION

<p><b>FILED</b></p> <p>July 9, 1996</p> <p><b>Cecil Crowson, Jr.</b> Appellate Court Clerk</p>
--

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	No. 03C01-9509-CC-00285
	)	
	)	Sevier County
v.	)	
	)	Hon. Rex Henry Ogle, Judge
	)	
CHRIS RAMEY,	)	(Pretrial Diversion Denial)
	)	
Appellant.	)	

**CONCURRING OPINION**

I concur in affirming the trial court. However, I believe that the record on appeal is adequate for full appellate review on the merits.

In State v. Winsett, 882 S.W.2d 806 (Tenn. Crim. App. 1993), now Justice A.A. Birch discussed appropriate procedures for pretrial diversion. The opinion indicates that all of the materials considered by the prosecutor are to be filed with the trial court by a defendant with the defendant's petition for writ of certiorari. Id. at 810. In this respect, Winsett indicates that the trial court may decide the cause upon receipt of the petition and the attached record, if an evidentiary hearing is unnecessary. I believe the Winsett procedure<sup>1</sup> was basically followed in this case.

The appellant's petition is marked filed on April 17, 1995, and states that his "petition to enter into a memorandum of understanding with accompanying materials in support thereof have been filed with the court and are incorporated herein by reference," and that the prosecutor's denial letter was incorporated by reference and

---

<sup>1</sup>The record reflects that the parties and the trial court were fully aware of Winsett and its teachings, although its case style is misnamed in the record.

attached to the petition. The trial court clerk certified that the record on appeal contained all the papers filed in the trial court in this case. The transcript of the arguments of counsel and comments by the trial court reflect that the trial court was considering the trial court record before it.

Although the record before us could be more specific in terms of showing that it is the same record that was presented to the prosecutor and the trial court, I believe it is sufficient under Winsett to allow us to review all of the materials with adequate confidence that it is the correct record. In any event, it shows that the denial was justified as explained in the majority opinion.

---

Joseph M. Tipton, Judge