

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1999 SESSION

FILED

January 7, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

CHARLES C. GARY,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

M1998-00457-CCA-R5-CD
C.C.A. NO. 01C01-9901-CR-00020

DAVIDSON COUNTY

**HON. CHERYL A. BLACKBURN,
JUDGE**

(Post-conviction)

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FOR THE APPELLEE:

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ORDER FILED: _____

AFFIRMED PURSUANT TO RULE 20

JOHN H. PEAY,

Judge

ORDER

The petitioner was convicted in 1972 of accessory before and after the fact of armed robbery, and sentenced to ten years incarceration. After serving approximately two years of his sentence, petitioner escaped. He was subsequently convicted of state and federal charges in Missouri. He was released from custody on these subsequent convictions in 1988; he was not arrested on the escape charge until 1997. Petitioner pled guilty, accepting a one year sentence consecutive to the time remaining on his original ten year sentence. Petitioner then filed for post-conviction relief, alleging that his guilty plea was constitutionally infirm because it resulted from ineffective assistance of counsel. After a hearing, the trial court denied relief, and this appeal followed. Upon our review of the record, we affirm the action of the trial court pursuant to Rule 20 of this Court.

Petitioner alleges that his trial counsel was ineffective in failing to tell him that the jury could set the sentence for escape; failing to inform him of the sentence he faced by pleading guilty; failing to advise him correctly about his parole eligibility on the ten year sentence; and failing to advise him that he had the right to appeal the trial court's denial of his motion to dismiss while proceeding to trial. The trial court heard proof on these allegations from both petitioner and his trial lawyer. Also introduced at the post-conviction hearing were the transcript of the guilty plea; the petitioner's written plea of guilty; and the judgment form. Upon reviewing the evidence, the trial court denied relief, finding that the petitioner had been advised at his guilty plea hearing of the jury's right to set the punishment for escape; that he did know of the sentence he would receive upon pleading guilty; that his lawyer did not misadvise him regarding his ten year sentence; and that he did know of his right to appeal the court's denial of his motion to dismiss.

The evidence does not preponderate against these findings. Since the action was taken in a proceeding without a jury and was not a determination of guilt, and because no error of law requiring a reversal of the trial court's action is apparent on the record, we affirm the trial court's action in accordance with Rule 20 of the Court of

Criminal Appeals of Tennessee.

It is so ordered.

JOHN H. PEAY, Judge

CONCUR:

GARY R. WADE, Presiding Judge

NORMA M. OGLE, Judge