

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MARCH 2000 SESSION

FILED

March 31, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

JOHN R. LEWIS,)
)
Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
Appellee.)

NO. M1999-01517-CCA-R3-PC

LINCOLN COUNTY

HON. CHARLES LEE,
JUDGE

(Post-Conviction)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED - RULE 20 ORDER

JOE G. RILEY, JUDGE

ORDER

The petitioner, John R. Lewis, appeals as of right the Lincoln County Circuit Court's denial of his petition for post-conviction relief arising from his 1997 conviction for aggravated sexual battery. Defendant received a sentence of ten years for his conviction. The conviction and sentence were affirmed by this court. See State v. John R. Lewis, C.C.A. No. 01C01-9707-CC-00289, Lincoln County (Tenn. Crim. App. filed September 23, 1998, at Nashville). Petitioner timely filed a *pro se* petition for post-conviction relief. Following an evidentiary hearing, the post-conviction court denied the petition. We **AFFIRM** the post-conviction court's judgment pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

At the post-conviction hearing, the defendant, his wife and trial counsel testified. Petitioner testified that trial counsel failed to interview and call witnesses; failed to explain the elements of the offense and range of punishment; and failed to adequately explain his right against self-incrimination. Trial counsel testified that he made informed "tactical" decisions about which witnesses to call. In addition, he testified that, during plea negotiations, he carefully explained the elements of the offense and the range of punishment. Trial counsel told the court that he explained to petitioner that he did not have to testify, but that petitioner chose to testify.

The post-conviction court held trial counsel's preparations, presentation and conduct in this case were within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). The post-conviction court also noted the petitioner failed to present one of the two witnesses he claimed trial counsel should have called. Thus, the post-conviction court held any claim of ineffectiveness with regard to counsel's failure to call the witness was without merit. In addition, the post-conviction court held counsel's decision not to call petitioner's wife as a witness was a reasonable strategic decision, and did not cause defendant prejudice since similar information was elicited through the

testimony of other witnesses. In summary, the post-conviction court found no deficiency by trial counsel and no prejudice to the petitioner resulting from trial counsel's representation.

After a thorough review of the record, we conclude the evidence does not preponderate against the findings of the trial court. No error of law requiring a reversal of judgment is apparent. Accordingly, the judgment of the trial court is **AFFIRMED** pursuant to Rule 20, Tennessee Court of Criminal Appeals. It appearing that the appellant is indigent, costs shall be taxed to the state.

So ordered. Enter:

JOE G. RILEY, JUDGE

CONCUR:

ALAN E. GLENN, JUDGE

WILLIAM B. ACREE, JR., SPECIAL JUDGE