

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 25, 2002

CONNIE LEE ARNOLD v. STATE OF TENNESSEE

**Direct Appeal from the Criminal Court for Carter County
No. S15534 Robert E. Cupp, Judge**

**No. E2001-02526-CCA-R3-PC
November 13, 2002**

JOSEPH M. TIPTON, J., dissenting.

I respectfully dissent. I believe the pro se petition sufficiently complies with the 1995 Post-Conviction Procedure Act and states a colorable claim for relief.

In reviewing the sufficiency of a post-conviction petition, we are to accept the allegations as true, unless they are contrary to what has already been adjudicated. See Swanson v. State, 749 S.W.2d 731, 735 (Tenn. 1988). The petition alleges the following:

There was a Mistrial of this Case in Mountain City In July 1995 and Judge Brown in Prejudice and Bias Moved it to The Carter County Court.

.....

Yet Petitioner from Arrest to Trial and ReTrial was subject to The News Media Constant [Exploitation] of said Charges and No fair trial could ever be had in Carter County and Counsel of [Record] Did Nothing to prevent same to the harms way of [Petitioner] in his Day in Court, and Unjust Verdicts, and Illegal Imprisonment for same.

I conclude that this alleges a colorable claim regarding the ineffective assistance of counsel for failure to seek a change of venue in the face of bad publicity. I would remand the case to the trial court for the appointment of counsel and counsel's filing of a concise amendment to the petition

raising any legitimate grounds for relief the petitioner arguably has. See Tenn. S. Ct. R. 28 § 6(C)(2).

JOSEPH M. TIPTON, JUDGE