

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Remanded by Supreme Court March 10, 2003

CONNIE LEE ARNOLD v. STATE OF TENNESSEE

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

**No. E2003-00691-CCA-RM-PC
April 15, 2003**

JOSEPH M. TIPTON, J., dissenting.

Even considering Burnett v. State, 92 S.W.3d 403 (Tenn. 2002), in which counsel was appointed and an opportunity to amend was provided, I believe the pro se petition in the present case adequately complies with the 1995 Post-Conviction Procedure Act and states a colorable claim for relief. Therefore, I respectfully dissent.

As noted in Burnett, 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. 92 S.W.3d at 406; 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 remain convinced 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 believe the petitioner should be given the same opportunity afforded the petitioner in Burnett. 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