IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE 1995 SESSION

FILED

September 13, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

DANIEL WAYNE TATE,	)
	) C.C.A. No. 02C01-9410-CC-00236
Appellant,	)
	) Henry County Circuit No. 12078
V.	)
	) Hon. Julian P. Guinn, Judge
	)
STATE OF TENNESSEE,	) (Post-Conviction: Aggravated Rape)
	)
Appellee.	)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellant, Daniel Wayne Tate, pled guilty to aggravated rape and received the minimum sentence of fifteen (15) years incarceration. He filed a petition for post-conviction relief, which the trial court denied. Tate now appeals the trial court's denial of his post-conviction petition, presenting for our review the following issues: whether his plea of guilty was knowing and voluntary, and whether he received effective assistance of counsel.

Because a guilty plea involves the waiver of several of the defendant's constitutional rights, the trial court may not accept a guilty plea without an affirmative showing that the defendant's plea decision was knowing and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969); State v. Mackey, 553 S.W.2d 337 (Tenn. 1977). The appellant maintains that his guilty plea was not voluntarily entered. Specifically, he alleges that his will was overborne by his mother and his attorney. He also asserts that he thought that if he pled guilty, he would receive a sentence of eight (8) years rather than fifteen (15). The appellant's contentions are based on a conversation between himself, his mother, and counsel which took place the day before trial. The conversation lasted approximately an hour and a half, and by the end of the discussion the appellant had decided to plead guilty.

The appellant testified at his post-conviction hearing that prior to the conversation on the eve of trial, he intended to enter a plea of not guilty. The appellant's mother testified that the appellant did not want to plead guilty, but that she "talked him into it" because she was "scared he was going to get more years." The appellant said that he changed his mind in response to his mother's pressure. Both the appellant and his mother indicated that at the end of the meeting, they understood that the appellant would plead guilty and be sentenced to eight years.

Appellant's counsel testified that he had the appellant's mother present at the meeting because he had considered using her as a witness and because he felt that the appellant did not completely understand the gravity of his situation. Counsel was completing his trial preparation; he did not meet with the appellant in order to "convince" him to plead guilty. Counsel had discussed with the appellant the possibility of the state's agreeing to reduce the charge, which could have resulted in a sentence of eight years. The state never agreed to the reduced charge, however, and appellant's counsel never told him that the eight year sentence would be available. He explained to the appellant that if he pled guilty, he would have to serve fifteen years day for day. In fact, counsel told the appellant that if he were convicted after a trial, he would be sentenced as a Range I standard offender and would probably get the minimum sentence of fifteen years.

The appellant signed a request for acceptance of plea of guilty which explained the constitutional rights waived by a guilty plea and stated that the minimum sentence was fifteen years. Furthermore, the trial court explained the appellant's rights in open court and informed the appellant that the minimum sentence was fifteen years served day per day. The appellant maintains that he did not question the fifteen year sentence at the time because he was "dazed." The appellant stated, "I never did think I was getting more years. I thought I was always getting eight years . . . when he said fifteen I thought I was getting eight."

In post-conviction proceedings, the petitioner has the burden of proving the allegations in his petition by a preponderance of the evidence. McBee v. State, 655 S.W.2d 191, 195 (Tenn. Crim. App. 1983). Furthermore, the findings of the trial court in post-conviction hearings are conclusive on appeal unless the evidence preponderates against the judgment. State v. Buford, 666 S.W.2d 473, 475 (Tenn. Crim. App. 1983); Clenny v. State, 576 S.W.2d 12, 14 (Tenn. Crim.

App. 1978). The post-conviction hearing court found that the appellant's guilty plea was entered knowingly and voluntarily. We conclude that the trial court's acceptance of the appellant's guilty plea complied with the requirements of Boykin v. Alabama, 395 U.S. 238 (1969), and State v. Mackey, 553 S.W.2d 337 (Tenn. 1977). The evidence does not preponderate against the hearing court's finding that the appellant's plea was knowing and voluntary.

The appellant's next issue is merely a reiteration of the first issue couched in the language of ineffective assistance of counsel. Appellant alleges that his counsel was ineffective by "convincing" him to plead guilty rather than go to trial. The record does not support the contention that counsel desired for the appellant to plead guilty.

We find the issues presented for our review to be without merit. The judgment of the trial court is therefore:

AFFIRMED.

_____
PAUL G. SUMMERS, JUDGE

CONCUR:

_____
WILLIAM M. BARKER, JUDGE

_____
MARY BETH LEIBOWITZ, SPECIAL JUDGE