

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

SEPTEMBER 1995 SESSION

**FILED**  
**November 22, 1995**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 )  
 Appellee )  
 )  
 v. )  
 )  
 RUDOLPH POWERS, )  
 )  
 Appellant )

NO. 02C01-9503-CR-00084

SHELBY COUNTY

Hon. Arthur T. Bennett, Judge

(Post-Conviction)

For the Appellant:

Glenn Wright  
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For the Appellee:

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and  
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John W. Pierotti  
District Attorney General  
and  
Thomas Henderson  
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Memphis, TN 38103

OPINION FILED \_\_\_\_\_

AFFIRMED

John K. Byers  
Senior Judge

**OPINION**

The appellant asserts eight issues of alleged action of counsel which he claims show he was represented by incompetent counsel at trial and on appeal.

The resolution of these issues was determined in a trial court hearing in which the appellant, his brother and trial counsel testified.

The trial judge weighed the testimony of the witnesses, examined the record of his conviction, and found the appellant had failed to carry the burden of proof to support his claims, as he must do to prevail. *State v. Kerley*, 820 S.W.2d 753 (Tenn. Crim. App. 1991).

We are bound by the findings of the trial judge on the evidence unless the evidence preponderates against the finding. *Rhodes v. State*, 816 S.W.2d 56 (Tenn. Crim. App. 1991). We find the evidence supports the finding of the trial judge.

The judgment is affirmed.<sup>1</sup>

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John K. Byers, Senior Judge

CONCUR:

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Joseph B. Jones, Judge

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Joseph M. Tipton, Judge

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<sup>1</sup> The State raises the issue of the statute of limitations. We do not review this issue in light of the holding of this Court in *Smith v. State*, 873 S.W.2d 5 (Tenn. Crim. App. 1993).