

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
OCTOBER SESSION, 1995

FILED

February 6, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

DEXTER JOHNSON,)
)
Appellant)
)
vs.)
)
STATE OF TENNESSEE,)
)
Appellee)

No. 03C01-9503-CR-00088

HAMILTON COUNTY

Hon. DOUGLAS A. MEYER, Judge

(Post-Conviction)

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(AT TRIAL AND ON APPEAL)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Dexter Johnson, appeals from the dismissal of his petition for post-conviction relief entered in the Criminal Court for Hamilton County.

The record reflects that, on February 11, 1994, the appellant entered guilty pleas to the offenses of first degree murder for the death of Donald Sirhan, first degree murder for the death of Renaldo Crawford, criminal attempt to commit first degree murder, and criminal attempt to commit aggravated robbery. The appellant received two life sentences for the murder convictions, twenty-five years for the attempted murder conviction, and six years for the attempted aggravated robbery conviction. The trial court ordered that the sentences be served concurrently. The appellant now collaterally attacks the judgments of conviction, contending that his guilty pleas to these offenses are constitutionally deficient.¹

After a review of the record, the judgment of the post-conviction court is affirmed.

On November 17, 1994, an evidentiary hearing was held to review the appellant's claims for post-conviction relief. The original petition was filed pro se and unsigned. The petition, as amended, alleges that the sentencing court failed to comply with the requirements of Rule 11, Tenn. R. Crim. P., as follows: (1) the court failed to inform the appellant of the nature of the charges and the respective minimum and maximum penalty ranges, and (2) the court failed to advise the appellant of his right to trial by jury, his right to confront witnesses,

¹We note that appellant's post-conviction counsel fails to raise any issue(s) on appeal before this court. We quote the following from the appellant's brief: "The undersigned attorney has been unable to find any arguably meritorious issues to present to this court upon appeal."

We therefore address the issue argued before the post-conviction court.

and his right against self-incrimination. Moreover, the appellant alleges that, on the date of his guilty pleas, he was not mentally competent. Therefore, his pleas were not voluntary.

At the post-conviction hearing, the appellant testified that he can neither read nor write, and that his petition was prepared by a "guy that did [it] for me" in the penitentiary. He was able to recall few, if any, of the details of his guilty plea hearing. The State introduced the transcript of the proceeding. Also referenced was a mental evaluation of the appellant, completed prior to the entry of his guilty pleas.

The post-conviction court found that although the trial court failed to advise the appellant of the sentencing ranges for the offenses entered, it otherwise complied with Rule 11. Moreover, the post-conviction court found that the record clearly provides a factual basis for findings of guilt, and that the appellant was mentally competent, based upon the conclusions of the Johnson Mental Health Center.

In a post-conviction proceeding, 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).

CONCLUSION

Initially, we must determine whether the appellant's guilty pleas are constitutionally sufficient under Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). We conclude that the appellant's pleas were entered "voluntarily" and "knowingly" and, thus, no Boykin claim is presented. Moreover, we conclude that there is nothing in the record to indicate that the appellant was incompetent at the time his guilty pleas were entered.

As previously determined, the record before us reveals that the trial court failed to advise the appellant in accordance with the first requirement of State v. Mackey, 553 S.W.2d 337 (Tenn. 1977), which requires the sentencing court to inform a defendant of the minimum and maximum penalty provided by law for the offense entered.² Post-conviction relief is limited to abridgements, during the conviction process, of a defendant's constitutional rights. Tenn. Code Ann. 40-30-105, (Tenn. 1990), (repealed 1995); Overton v. State, 874 S.W.2d 6, 12 (Tenn. 1994). Failure of the sentencing court to inform the appellant as to the minimum and maximum range of punishment is a collateral consequence of a guilty plea and, as such, does not affect the constitutional validity of the appellant's pleas under Boykin. Blankenship v. State, 858 S.W.2d 897, 905 (Tenn. 1993); see also Bryan v. State, 848 S.W.2d 72, 75 (Tenn. Crim. App.), perm. to app. denied, (Tenn. 1992); State v. Williams, No. 25 (Tenn. Crim. App. at Jackson, August 28, 1991); Mitchell v. State, C.C.A. No. 65 (Tenn. Crim. App. at Jackson, April 10, 1991), perm. to app. denied, (Tenn. Sept. 9, 1991).³

²Compliance with this requirement is also mandated by Rule 11(c)(1), Tenn. R. Crim. P., which provides in pertinent part, "Before accepting a plea of guilty, . . . the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:

- (1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law."

³Bryan, Williams, and Mitchell hold that failure to advise an accused of the minimum and maximum sentences does not give rise to a cognizable post-

Having concluded that the appellant's pleas are constitutionally valid, the judgment of the post-conviction court is affirmed.

David G. Hayes, Judge

CONCUR:

John H. Peay, Judge

Joseph M. Tipton, Judge

conviction issue because the Rule 11(c)(1) requirement is not constitutionally mandated.