IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE SESSION, 1996

FRANK DEWAYNE BASKERVILLE,	)	**C.C.A. NO. 02C01-9509-CC-00268**
Appellant,	)	
	)	**FAYETTE COUNTY**
VS.	)	
	)	**HON. JON KERRY BLACKWOOD**
STATE OF TENNESSEE,	)	**JUDGE**
Appellee.	)	(Post-Conviction)

ON APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT OF FAYETTE COUNTY

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

The Petitioner appeals as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure from the trial court's denial of his petition for post-conviction relief. The Petitioner pleaded guilty to attempted second degree murder and possession of a deadly weapon in the commission of a felony. He was sentenced as a Range I standard offender to eight (8) years and one day for the attempted murder conviction and to a concurrent sentence of one (1) year for the weapon possession conviction. At the post-conviction hearing, the trial judge denied the petitioner's claim of ineffective assistance of counsel at his guilty plea. We affirm the judgment of the trial court.

The Petitioner was involved in a running feud with another individual. After one of their encounters, the Petitioner retrieved a gun and shot into this individual's house. This shot injured a child who was in the house. The Petitioner was arrested and made a full confession concerning the incident. He was indicted for attempted first degree murder and possession of a deadly weapon. His attorney then worked with the District Attorney's office to obtain a satisfactory guilty plea which included a lesser offense.

The Petitioner argues that he was afforded the ineffective assistance of counsel at his guilty plea. He argues that his attorney was ineffective because he did not interview witnesses, file motions or advise the Petitioner that his eight (8) year and one (1) day sentence would preclude the Petitioner from seeking certain sentencing alternatives.

In determining whether counsel provided effective assistance at trial, the court must decide whether or not counsel's performance was within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930 (Tenn. 1975). To succeed on a claim that his counsel was ineffective at trial, a petitioner bears the burden of showing that his counsel made errors so serious that he was not functioning as counsel as guaranteed under the Sixth Amendment and that the deficient representation prejudiced the petitioner resulting in a failure to produce a reliable result. Strickland v. Washington, 466 U.S. 668, 687, reh'g denied, 467 U.S. 1267 (1984); Cooper v. State, 849 S.W.2d 744, 747 (Tenn. 1993); Butler v. State, 789 S.W.2d 898, 899 (Tenn. 1990). To satisfy this second prong the petitioner must show a reasonable probability that, but for counsel's unreasonable error, the fact finder would have had reasonable doubt regarding petitioner's guilt. Strickland, 466 U.S. at 695. This reasonable probability must be "sufficient to undermine confidence in the outcome." Harris v. State, 875 S.W.2d 662, 665 (Tenn. 1994).

When reviewing trial counsel's actions, this court should not use the benefit of hindsight to second-guess trial strategy and criticize counsel's tactics. Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982). Counsel's alleged errors should be judged at the time it was made in light of all facts and circumstances. Strickland, 466 U.S. at 690; see Cooper 849 S.W.2d at 746.

This two part standard of measuring ineffective assistance of counsel was also applied to claims arising out of the plea process. Hill v. Lockhart, 474 U.S. 52 (1985). The prejudice requirement was modified so that the petitioner "must

show that there is a reasonable probability that, but for counsel's errors he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

The Petitioner and his attorney were the only witnesses at the hearing on the petition for post-conviction relief. On direct examination, the Petitioner testified that he had supplied a list of witnesses to his attorney, that he did not remember any hearings on motions filed by his attorney, and that his attorney did not explain the consequence of an eight-year plus one day sentence. On cross-examination, the Petitioner testified that after his indictment he was looking for the best deal. He also testified that he talked to his attorney every time he came to court which was about three or four times. He stated that his attorney did not force him to plead guilty, but that he wanted to plead guilty.

The Petitioner's attorney also testified at the hearing. He stated that he had a lengthy conference with the Petitioner, and the case was at all times heading for a plea bargain. He stated that he explained to the Petitioner what the eight (8) year plus one (1) day sentence would mean. The attorney stated that it is his practice to ask his clients for any witnesses' names and that there was not a list in the Petitioner's case file. Therefore, he had to assume that no names were given to him.

There is no evidence that would support the contention that the Petitioner's attorney was ineffective. The testimony of the Petitioner's attorney is directly contradictory to the arguments made by the Petitioner. The trial court concluded that the Petitioner had "utterly failed to show in any respect" that counsel was ineffective. There is no evidence that the Petitioner would not have pleaded

guilty if the attorney had done anything differently. Therefore, this issue is without merit.

We affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE

CONCUR:

_____
JOSEPH M. TIPTON, JUDGE

_____
JERRY L. SMITH, JUDGE