

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL SESSION, 1996

FILED
August 2, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)	C.C.A. NO. 02C01-9508-CR-00222
)	
Appellee,)	
)	
)	SHELBY COUNTY
VS.)	
)	HON. BERNIE WEINMAN
ALFRED D. FLOWERS,)	PRESIDING JUDGE
)	
Appellant.)	(Post-Conviction)

ORDER

Appellant Alfred D. Flowers appeals from the dismissal of his petition for post-conviction relief filed in the Shelby County Criminal Court. The record reflects that on June 24, 1992, Appellant entered a guilty plea to second degree murder as well as to six counts of aggravated robbery and one of criminal attempt for aggravated robbery. On appeal, Appellant asserts that he received the ineffective assistance of counsel in violation of the Sixth Amendment.

At the post-conviction hearing, only Appellant and the trial attorney testified. Appellant made a few brief allegations relating to his attorney's lack of preparation including the attorney's failure to meet with him and to procure witnesses on his behalf. However, the attorney contradicted any such suggestion testifying that he had met with Appellant at least seven times, hired an investigator for the case who interviewed numerous witnesses, and filed dozens of motions on Appellant's behalf in preparation for the trial of the case. Furthermore, Appellant was unable to present the names of any witnesses or the existence of any other evidence which would have been beneficial to his defense.

It seems that the main thrust of this appeal lies in Appellant's claim that his guilty plea was not entered voluntarily because it was based on his attorney's improper advice regarding his "release eligibility date" percentage -- the percentage of time that a defendant must serve prior to parole or other forms of release eligibility. See Tenn. Code Ann. § 40-35-101 (1990) Sentencing Commission Comments. As part of the plea agreement, Appellant received, for the murder conviction, a sentence of 35 years as a Multiple Range II offender with a 35% release eligibility. He claimed that his attorney told him that he would be serving the 35 years for the murder charge at 30% instead of 35%. He acknowledged that, because he was relying on what his attorney told him, he did not read the papers that he signed which clearly stated the RED percentage was 35%. However, when the trial attorney testified at the post-conviction hearing, he said that he had explained all of the paperwork to Appellant.

In a thorough order containing its "Findings of Fact and Conclusions of Law," the trial court made the following findings:

[Appellant] freely and voluntarily entered his guilty pleas and understood the consequences of entering the pleas. It would appear from the record that his attorney thoroughly investigated the case, filed all the necessary motions and was prepared to try the case if the defendant desired to proceed with the trial. It would further appear that the defense attorney negotiated an extremely favorable guilty plea settlement for his client. It would appear that the defendant is attempting to re-negotiate his plea to the murder charge from a Range II Persistent Offender to a Range I Standard Offender. The Court finds the defendant understood the terms of his guilty plea when he entered his plea on June 24, 1992. The Court finds that the advice given and services rendered by the defendant's counsel were within the range of competency demanded by an attorney in a criminal case and that the [trial attorney's] representation of the defendant at this guilty plea complied with the requirements set out by the Supreme Court of Tennessee in the case of Baxter v. Rose, 523 S.W.2d 930 (Tenn. 1975).

After full consideration of the record, the briefs, and the law governing the issues presented by Appellant, we are of the opinion that the evidence does not preponderate against the trial court's findings and conclusions and that no error of

law exists that would require a reversal. Therefore, we determine that the judgment of the trial court should be affirmed in accordance with Rule 20 of the Court Criminal Appeals.

JERRY L. SMITH, JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

JOSEPH M. TIPTON, JUDGE