

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JULY SESSION, 1996

**FILED**  
October 8, 1996  
Cecil W. Crowson  
Appellate Court Clerk

SCOTTIE DEWAYNE LIGHT, )

Appellant, )

VS. )

STATE OF TENNESSEE, )

Appellee. )

C.C.A. NO. 010019912 CR 00418

DAVIDSON COUNTY

HON. THOMAS H. SHRIVER  
JUDGE

(Post-Conviction)

ON APPEAL FROM THE JUDGMENT OF THE  
CRIMINAL COURT OF DAVIDSON COUNTY

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

AFFIRMED

DAVID H. WELLES, JUDGE

# OPINION

This case is here by appeal as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. In the original prosecution, the petitioner was convicted by jury of first degree murder. His conviction was upheld by this Court on direct appeal. See State v. Scottie Dewayne Light and Johnny Ward, C.C.A. No. 01C01-9110-CR-00297, Davidson County (Tenn. Crim. App., Nashville, filed Jan. 21, 1993). The petitioner sought post-conviction relief, alleging that he was denied effective assistance of counsel at trial. After conducting an evidentiary hearing, the trial court denied the petition. In this appeal, the petitioner contends that the trial court erred in denying the petition. We find no merit to the issue raised, and therefore, we affirm the judgment of the trial court.

We begin with a summary of the facts as stated in this Court's opinion from the direct appeal<sup>1</sup>:

On June 23, 1990, the Godwin family was having a birthday party at Michael Godwin's home at 5000 Delaware Avenue in Nashville. Mr. Light was mad at Al Godwin because he had impregnated Mr. Light's sister, Toby Ward, and had then ended his relationship with her. For several days the Godwins had been receiving threatening telephone calls from Mr. Light. In addition, he drove his pickup truck up and down the street and screeched his tires in front of their house.

On that night, Mr. Light placed thirteen harassing, threatening and obscene telephone calls to the Mitchell Godwin residence between 8:26 and 8:44. Mr. Light threatened family members and challenged them to meet him at McCabe Park located less than a mile from the Godwin home.

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<sup>1</sup>State v. Scottie Dewayne Light and Johnny Ward, No. 01C01-9110-CR-00297, Davidson County (Tenn. Crim. App., Nashville, filed Jan. 21, 1993).

James A. Chenowith, who was married to one of the Godwin daughters, answered the last call and agreed to meet Mr. Light at the park, although he had no intention of actually going to the park.

At approximately 9:00 p.m., Mr. Light drove past the Godwin house in an eastern direction in his pickup truck. He then turned around, came back down the street and stopped in front of the Godwin home, with the passenger side of the truck facing the front yard of the house. Mitchell Godwin went to the truck and spoke to the passenger, Mr. Ward. He leaned into the truck and he and Mr. Ward talked face to face. Mr. Light got out of the truck, leveled a shotgun across the bed of his truck and shot Al Godwin in the abdomen. They hurriedly drove away. The police and paramedics were called and Mr. Godwin was taken to the hospital where he was pronounced dead.

Approximately an hour later the appellant was arrested at his home and taken to police headquarters where he confessed to shooting the shotgun into the crowd of people in the Godwin yard. He contended that they came out into the road and blocked the path of his truck. He had to stop to avoid hitting the people. He denied that he intended to kill the victim, contending that "it just happened." He vigorously denied that his brother, Mr. Ward was with him in the truck, contending that he acted alone throughout. Other witnesses testified that they saw another gun sticking out the window on the passenger side pointed at Mitchell Godwin, although Mr. Godwin testified that he saw no gun.

Mr. Light presented the testimony of various witnesses who were present at the scene to show that Mr. Light was provoked. Specifically there was testimony that Mr. Chenowith threw a rock at the truck, but there was no allegation that Mr. Light shot in self defense. Mr. Chenowith admitted that he was so provoked that he picked up a rock and threw it at the truck. Mr. Ward presented the testimony of a police officer, who found a fresh dent in the middle of the hood of the truck, further establishing that there was some provocation by those present. A broken baseball bat was also found in the yard.

Based on the above facts, the petitioner was convicted of first degree murder. The petitioner now contends that his trial counsel, Justin Johnson, was ineffective for failing to strike a juror who allegedly lived down the street from relatives of the victim, for failing to call certain witnesses at trial, and for failing to investigate his mental history thoroughly. The petitioner argues that had Johnson

effectively pursued these courses of action, he would have been convicted of a lesser degree of homicide.

At the hearing on the post-conviction petition, the petitioner testified that he had asked Johnson to strike a juror whom he knew lived down the street from relatives of the victim. According to the petitioner, Johnson ignored the request. The petitioner testified further that he had informed Johnson that multiple institutions had records pertaining to his mental and emotional history, but Johnson never procured these records. He also asked Johnson to telephone Connie Gwin, a former teacher of the petitioner who knew a great deal about his mental condition, but Johnson did not do so.

Connie Gwin testified at the post-conviction hearing that she had been the petitioner's special needs teacher during fifth and sixth grades. She has maintained contact with the petitioner since that time and received a call from him after his arrest for the offense in the present case but before trial. Gwin stated that the petitioner had demonstrated a volatile temper as a student which caused him to go into a "state" in which he could not control his violent actions. She also stated that she would have given similar testimony at trial. On cross-examination, Gwin admitted that she had made no efforts to contact the petitioner's attorney. Gwin also admitted that the petitioner's behavior during his "states" was sometimes calculated to achieve a desired result.

Loretta Light, the petitioner's mother, testified at the post-conviction hearing that she had asked Johnson to investigate records concerning the petitioner's mental condition located at Cumberland Hall and the Koala Center,

two institutions devoted to treating troubled students. She also asked Johnson to have a mental evaluation performed on the petitioner. According to Light, both of these requests were ignored. In addition, Johnson told Light that he intended to call her as a witness at trial, but he never did so. She would have testified regarding the petitioner's mental condition prior to the offense, specifically that he was not angry with the victim.

Justin Johnson, the petitioner's trial attorney, testified that he did not recall any insistence by the petitioner to strike a juror based on where he or she lived. Johnson stated that he had, in fact, driven out to the victim's neighborhood in order to familiarize himself with the area for the purposes of jury selection. He also asked several questions of the potential jurors that would have revealed any prejudice. Johnson testified further that the petitioner's parents had made him aware of the mental and emotional history of the petitioner and had given him some records regarding that history. As a result, he informed the Dede Wallace Center of the petitioner's history and requested an evaluation to determine the petitioner's competency to stand trial and his mental condition at the time of the offense. According to Johnson, the petitioner never suggested that he contact Connie Gwin. Johnson stated that the defense strategy at trial was to avoid a first degree murder conviction by challenging the State's proof on the petitioner's mental state. To that end, Johnson elicited testimony from even the State's witnesses that the petitioner was a "hot head" who simply loses control if he "blows up."

At the conclusion of the hearing, the trial court ruled that Johnson's performance at trial was not constitutionally deficient. With regard to the jury

selection issue, the trial court specifically accredited Johnson's testimony that he was not aware of the presence of any juror prejudiced against the petitioner. In addition, the trial court found that Johnson was aware of the petitioner's mental history "and had him evaluated with the only resources that really were available." Furthermore, the trial court stated that the testimony of Connie Gwin and Loretta Light would have added nothing beyond the testimony garnered from the State's witnesses. As a result, the trial court denied the petition, stating that Johnson "did not just an adequate job, but, a -- a very good job of representing a defendant in a case where it was quite clear that he was guilty."

In determining whether counsel provided effective assistance at trial, the court must decide whether counsel's performance was within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (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 the 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 they were made in light of all facts and circumstances. Strickland, 466 U.S. at 690; see Cooper 849 S.W.2d at 746.

After reviewing the record, we find that the trial court did not err in denying the petition. Although the petitioner testified that he had asked Johnson to strike a juror who allegedly lived down the street from relatives of the victim, the trial court did not find this testimony to be persuasive. Instead, the trial court found Johnson's testimony to be credible. There is evidence in the record to support the trial court's finding, and hence, we must conclude that Johnson's representation was not constitutionally deficient with regard to jury selection.

Likewise, we must also conclude that Johnson's representation was not constitutionally deficient with regard to the investigation and presentation of the petitioner's mental condition. The trial court found that Johnson was quite aware of the petitioner's mental history and took the appropriate steps to evaluate his mental condition further. Johnson testified that the petitioner had not asked him to contact Connie Gwin, and Gwin stated that she had made no efforts to speak with the petitioner's attorney. With regard to Loretta Light, apparently Johnson intended to call her as a witness but changed his strategy when he was able to elicit testimony regarding the petitioner's mental condition from other witnesses. From these circumstances, we cannot conclude that Johnson's representation was deficient. Moreover, the petitioner has failed to demonstrate any prejudice stemming from these alleged deficiencies. We agree with the trial court that

neither Gwin's nor Light's testimony would have revealed any significant information not already garnered from the testimony of other witnesses.

The petitioner has failed to carry his burden of demonstrating that his counsel's representation was deficient and that the deficient representation prejudiced him. The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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WILLIAM M. BARKER, JUDGE

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JERRY L. SMITH, JUDGE