

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER 1996 SESSION

<p><b>FILED</b></p> <p>October 8, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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<p><b>BOBBY JOE SEAY,</b> Appellant, V. <b>STATE OF TENNESSEE,</b> Appellee.</p>	<p>) ) C.C.A. No. 01C01-9512-CR-00419 ) ) Davidson County ) ) Honorable Thomas H. Shriver, Judge ) ) (Post-Conviction) ) )</p>
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FOR THE APPELLANT:

Terry J. Canady  
Attorney at Law  
211 Printer's Alley Building  
Suite 400  
Nashville, TN 37201

FOR THE APPELLEE:

Charles W. Burson  
Attorney General & Reporter

M. Allison Thompson  
Assistant Attorney General  
Criminal Justice Division  
450 James Robertson Parkway  
Nashville, TN 37243-0493

Victor S. (Torry) Johnson III  
District Attorney General

Jon P. Seaborg  
Asst. Dist. Attorney General  
Washington Square  
222 2nd Avenue N, Suite 500  
Nashville, TN 37201-1649

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

**AFFIRMED**

**PAUL G. SUMMERS,**  
Judge

**OPINION**

In 1992, the appellant, Bobby J. Seay, was convicted of aggravated robbery and received an eight-year sentence. His conviction was affirmed by this Court. In 1994, he petitioned for post-conviction relief alleging ineffective assistance of counsel. In 1995, following a hearing, his petition was denied.

The appellant appeals the denial of his petition for post-conviction relief. He contends that he was denied effective assistance of counsel due to:

- (1) counsel's failure to timely file a motion of new trial;
- (2) counsel's presentation of only one witness, which was ineffective;
- (3) counsel's failure to object to a tape of the victim's testimony at the preliminary hearing;
- (4) counsel's failure to object to the use of a suggestive identification;
- (5) counsel's failure to file a motion to suppress a confession;
- (6) counsel's failure to properly prepare for trial; and
- (7) counsel's failure to file an appellate brief.

We affirm the trial court's dismissal of the petition.

In post-conviction proceedings, 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). The findings of the trial court in post-conviction hearings are conclusive on appeal unless the evidence preponderates against the judgment. Butler v. State, 789 S.W.2d 898, 899-900 (Tenn. 1990). Furthermore, this Court may not reweigh or reevaluate the evidence, nor substitute its inferences for those drawn by the trial judge. Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990).

In determining whether the appellant received effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution and Article 1 Section 9 of the Tennessee Constitution, this Court must determine whether the performance of trial counsel was within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). To reverse a conviction on these grounds, the appellant must show that counsel's representation was deficient and that there was prejudice resulting from that deficiency. Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984).

After a hearing, the trial judge found the appellant's counsel to be ineffective. The state does not oppose this contention. Therefore, this Court will presume that the appellant's counsel was ineffective. The first prong of Strickland has been satisfied.

The second prong of Strickland requires the appellant to show that his counsel's deficient representation was prejudicial. Deficient representation becomes prejudicial when the appellant is deprived of a fair trial with a reliable result. Cox v. State, 880 S.W.2d 713, 717 (Tenn. Crim. App. 1994). If this Court finds that the appellant suffered no prejudice, any deficiency in his trial counsel is considered harmless. Strickland, 466 U.S. at 693. Therefore, even if the appellant's counsel was ineffective, he must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 693.

The appellant has not carried the burden of proving that the results of his trial would have been different had he received more effective representation. The state had a substantial case against the appellant. After advisement of rights, the appellant confessed to committing the crime and was arrested while in possession of the stolen property. The post-conviction judge stated, "I don't see a defense to this case."

We agree with the court's assessment. Regardless of the appellant's trial representation, the evidence supports his conviction beyond a reasonable doubt. Any error by counsel would not have deprived the appellant of a fair adjudication of the case.

The evidence does not preponderate against the post-conviction findings of the trial court. Accordingly, we find the appellant's contention devoid of merit. The dismissal of the post-conviction petition is affirmed.

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PAUL G. SUMMERS, Judge

CONCUR:

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GARY R. WADE, Judge

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L. T. LAFFERTY, Special Judge