

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

AUGUST 1996 SESSION

FILED
September 30, 1996
Cecil W. Crowson
Appellate Court Clerk

HUEY STRADER,)
)
Appellee,)
)
v.)
)
DAVID MILLS, Warden,)
)
Appellant.)

No. 01C01-9512-CC-00420
Hickman County
Hon. Henry Denmark Bell, Judge
(Habeas Corpus)

For the Appellant:

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Franklin, TN 37065-0937

OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

Joseph M. Tipton
Judge

OPINION

The petitioner, Huey Strader, appeals as of right from the Hickman County Circuit Court's dismissal of his petition for a writ of habeas corpus. The petitioner is presently serving a ninety-nine-year sentence in the custody of the Department of Correction resulting from his 1976 Rhea County conviction for first degree murder. The petitioner's underlying claim in this case is that his conviction violates due process because the jury was given an instruction equating moral certainty with reasonable doubt. The trial court dismissed the petition because it fails to state a claim for habeas corpus relief in that it does not raise an issue with respect to either a void judgment or an expired sentence. Also, the trial court recognized that it could not treat the petition as one for post-conviction relief because Hickman County was not the county of conviction and such a claim would be time barred.¹ Finally, the trial court stated that, in any event, the jury instruction at issue was constitutionally sound. We agree with the trial court in all respects.

After full consideration of the record, the briefs, and the law governing the issue presented, we are of the opinion that the record supports the trial court's actions, that no error of law exists that would require a reversal, and that no precedential value would be derived from the rendering of an opinion. Therefore, we conclude that the judgment of the trial court should be affirmed pursuant to Rule 20, Tenn. Ct. Crim. App. R.

Joseph M. Tipton, Judge

¹ The petitioner acknowledged in his petition that he had previously filed unsuccessful petitions for post-conviction relief in 1978, 1983, and 1987.

CONCUR:

John H. Peay, Judge

David H. Welles, Judge