

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER 1996 SESSION

**FILED**

**November 8, 1996**

**Cecil W. Crowson  
Appellate Court Clerk**

ALFONZO TOWNSEND,

\*

C.C.A. # 01C01-9508-CR-00273

Appellant,

\*

DAVIDSON COUNTY

VS.

\*

Honorable Seth Norman, Judge

STATE OF TENNESSEE,

\*

(Post-Conviction)

Appellee.

\*

For Appellant:

Roger K. Smith, Attorney  
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For Appellee:

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Roe Ellen Coleman  
and  
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Assistant District Attorneys General  
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Nashville, TN 37201

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

AFFIRMED

GARY R. WADE, JUDGE

## OPINION

The petitioner, Alfonzo Townsend, appeals the trial court's denial of his petition for post-conviction relief. The single issue presented for review is whether the petitioner was denied the effective assistance of counsel.

We affirm the judgment of the trial court.

On March 25, 1993, the petitioner entered guilty pleas to two counts of aggravated rape and one count of attempted first degree murder. Several other charges were dismissed as a part of the plea agreement. Consecutive sentences were imposed on each of three twenty-five year sentences for a total effective sentence of 75 years.

At the time of his arrest, the petitioner was on parole for a California conviction. Prior to the entry of his guilty pleas, the petitioner submitted to a psychological examination by Leonard H. Morgan, Ph.D. Dr. Morgan concluded that the defendant understood "the charges pending against him and the consequences that could follow" and that the petitioner was able to "advise his counsel and participate in this own defense." Dr. Morgan determined that his findings would not support an insanity defense. The petitioner's trial counsel met with the petitioner several times prior to reaching the plea agreement. His own observations of the petitioner were consistent with Dr. Morgan's findings.

During the course of the evidentiary hearing on his petition for post-conviction relief, the petitioner claimed that he was on medication at the time of his plea and had relied upon his trial counsel's representation that he would probably be assigned by the Department of Corrections to a special needs facility if he accepted

the plea agreement. Afterward, the petitioner was placed in the West Tennessee High Security Facility in Henning, Tennessee. The petitioner claimed that he would not have entered his pleas had he been thinking clearly. In July of 1994, a forensics evaluation team from Middle Tennessee Mental Health Institute evaluated the petitioner. It was the team's collective opinion that the petitioner was competent, able to assist in his own defense, and fully capable of understanding the terms of the plea agreement. At the conclusion of the proof, the trial court found that trial counsel was not deficient in his performance and that the petitioner knowingly and voluntarily entered his pleas of guilt.

In order for the petitioner to be granted relief on ground of ineffective counsel, he must establish that the advice given or the services rendered were not within the range of competence demanded of attorneys in criminal cases and that, but for his counsel's deficient performance, the result of his trial would have been different. Strickland v. Washington, 466 U.S. 668, 693 (1984); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). This two-part standard, as it applies to guilty pleas, is met when the petitioner establishes that, but for his counsel's errors, he would not have entered a plea of guilt and would have insisted on trial. Hill v. Lockhart, 474 U.S. 52, 53 (1985).

The burden is on the petitioner to show that the evidence preponderates against the findings of the trial judge. Clenny v. State, 576 S.W.2d 12 (Tenn. Crim. App. 1978), cert. denied, 441 U.S. 947 (1979). Otherwise, the findings of fact are deemed to be conclusive. Graves v. State, 512 S.W.2d 603, 604 (Tenn. Crim. App. 1973).

In short, the testimony presented at the evidentiary hearing does not preponderate against the findings of the trial court. In our view, trial counsel met or exceeded the applicable standards of performance. The evidence also establishes that the petitioner knowingly understood the consequences of his plea.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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Paul G. Summers, Judge

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L.T. Lafferty, Special Judge