

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1997 SESSION

**FILED**  
January 30, 1997  
Cecil W. Crowson  
Appellate Court Clerk

**DANIEL L. CROW**

Appellant,

**VS.**

**STATE OF TENNESSEE,**

Appellee.

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**C.C.A. NO. 01C01-9506-CC-00205**

**HUMPHREYS COUNTY**

**HON. ROBERT E. BURCH,  
JUDGE**

(Post Conviction)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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District Attorney General Pro Tem

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Lawrenceburg, Tennessee 38464

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

**AFFIRMED**

**JOE G. RILEY,  
JUDGE**

**OPINION**

This is an appeal from denial of post conviction relief. Crow was convicted of second degree murder and aggravated robbery and sentenced to an effective sixty year term of imprisonment. The issues for review are: (1) whether defendant was denied counsel at a critical stage of prosecution; (2) whether the post conviction court erred in finding that personal opinions during the state's closing argument did not constitute prosecutorial misconduct; (3) whether defendant was denied his Fifth Amendment Due Process rights; and (4) whether the trial court erred in finding that the defendant received effective assistance of counsel at trial. We affirm the judgment of the trial court pursuant to Rule 20 of this court.

Crow's original conviction and sentence were affirmed by this court. State v. Crow, 1993 WL 247948, C.C.A. No. 01-C-01-9110-CC-00304 (Tenn. Crim. App. filed July 8, 1993, in Nashville). He filed for post conviction relief. The denial of that petition resulted in this appeal.

#### DENIAL OF COUNSEL

Crow alleges that he was denied counsel at a critical stage of prosecution in violation of the Sixth Amendment of the United States Constitution. This issue was addressed on direct appeal and found to be without merit. Therefore, the issue has been previously determined. T.C.A. § 40-30-112(a)(1990); State v. House, 911 S.W.2d 705 (Tenn. 1995).

#### PROSECUTORIAL MISCONDUCT

Crow next alleges that the state engaged in prosecutorial misconduct by improperly expressing its opinion during closing argument. We agree with the trial court's finding that the comments were not improper and not prejudicial. Therefore, this issue is without merit.

#### DUE PROCESS CLAIM

Crow also argues that the delay of over eighteen months for the preparation of the trial transcript is a violation of his due process rights. He cites no authority for this claim; therefore, the issue is waived. Rule 10(b), Rules of the Court of Criminal Appeals. Furthermore, the delay, although unfortunate, is not a denial of Crow's due process rights.

#### INEFFECTIVE ASSISTANCE OF COUNSEL

Crow contends his trial attorneys were ineffective in advising him not to testify. This advice was a tactical decision. See Hellard v. State, 629 S.W.2d 4 (Tenn. 1982). Furthermore, the record shows it was Crow's decision not to testify. There has been no showing of prejudice. See Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Crow contends his trial attorneys were ineffective by failing to challenge the validity of a prior conviction that was used to enhance his sentence. The trial court concluded that such a challenge would not have been successful. Crow has not shown anything to the contrary. The failure to challenge the prior conviction was within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2 930, 936 (Tenn. 1975).

Our review of the record does not reveal any deficient performance of counsel, nor has there been any prejudice to Crow as a result of counsel's performance. This issue is without merit. See Strickland v. Washington, supra.

The judgment of the trial court is AFFIRMED pursuant to Rule 20 of this court.

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JOE G. RILEY, JUDGE

CONCUR:

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DAVID H. WELLES, JUDGE

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JOHN H. PEAY, JUDGE