

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER SESSION, 1996

**FILED**  
February 18, 1997  
~~Geoff Crowder Jr.~~  
Appellate Court Clerk

STATE OF TENNESSEE, )

Appellee, )

VS. )

PRINCE JAMEEL R. TARIQ, )

Appellant. )

C.C.A. NO. 03C01-9602-CR-00086

HAMILTON COUNTY

HON. STEPHEN M. BEVIL  
JUDGE

(Post-Conviction)

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

FOR THE APPELLANT:

PRINCE TARIQ  
Pro Se

FOR THE APPELLEE:

CHARLES W. BURSON  
Attorney General and Reporter

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

AFFIRMED

DAVID H. WELLES, JUDGE

# OPINION

The Petitioner appeals as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure from the trial court's denial of his petition for post-conviction relief. On July 25, 1995, the Petitioner pleaded guilty to aggravated kidnapping and received a ten year sentence.<sup>1</sup> He filed a pro se petition for post-conviction relief on November 30, 1995. In his petition for post-conviction relief, the Petitioner argues that he was denied due process of law because the attorney who represented him at his preliminary hearing had a conflict of interest and that he was denied effective assistance of counsel at his guilty plea proceeding. On December 21, 1995, the trial court denied the petition without conducting an evidentiary hearing, finding that the Petitioner had waived consideration of the issues. We affirm the judgment of the trial court.

Although the record is sparse, we begin by setting forth the relevant facts pertaining to the Petitioner's issues.<sup>2</sup> We note that the record contains nothing with regard to the facts supporting the Petitioner's conviction for aggravated kidnapping and, hence, we are unable to summarize the circumstances of the offense. On or about October 13, 1994, the Petitioner was represented by Assistant Public Defender William Dobson at a preliminary hearing. On December 14, 1994, the Petitioner was indicted for especially aggravated kidnapping (case number 203991), reckless endangerment (number 203992),

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<sup>1</sup> The Petitioner was indicted for, among other charges not challenged in this post-conviction petition, especially aggravated kidnapping. Although there is some confusion in the record, it appears that he pleaded guilty to aggravated kidnapping and received a ten year sentence for that conviction.

<sup>2</sup> The facts set forth in this opinion come solely from the petition for post-conviction relief and the trial court's order denying the petition.

evading arrest (number 203993), and violation of the drivers license law (number 203994). Dobson was allowed to withdraw as Petitioner's counsel on February 8, 1995, due to a conflict of interest. The record is unclear as to the specific nature of the conflict of interest. Following Dobson's withdrawal as counsel, Alan Beard was appointed to represent the Petitioner. The case was set for trial on July 25, 1995. On the date of trial, the Petitioner, with the assistance of Beard, filed a motion to dismiss the indictment based on Dobson's conflict at the preliminary hearing. Shortly thereafter, the Petitioner requested that his motion to dismiss be stricken and entered guilty pleas.

On November 30, 1995, the Petitioner filed a pro se petition for post-conviction relief, challenging only his aggravated kidnapping conviction (case number 203991). He argued that, at his preliminary hearing, his due process rights had been violated because of counsel Dobson's conflict of interest. The Petitioner did not offer significant details concerning the conflict of interest and did not explain how the conflict constituted a denial of due process. In addition, although the petition is somewhat vague, it appears that the Petitioner also argued that his counsel at the guilty plea proceeding, Alan Beard, rendered ineffective assistance of counsel by failing to raise the conflict of interest issue until the day of trial, July 25, 1995. The trial court denied the petition without conducting an evidentiary hearing through an order entered on December 21, 1995. The Petitioner then appealed to this Court.

In his first issue, the Petitioner argues that he was denied due process at his preliminary hearing because of counsel Dobson's conflict of interest. Although the record is ambiguous with regard to the nature of the conflict, it

appears that the Hamilton County Public Defender's Office had previously represented one of the witnesses who testified at the preliminary hearing. The Petitioner argues that Dobson's representation at the preliminary hearing, suffering from the conflict of interest, violated his due process rights.

The purpose of a preliminary hearing is to determine whether there is probable cause to believe the accused committed the offense charged and to fix the bail amount for bailable offenses. See State v. Armes, 607 S.W.2d 234, 238 (Tenn. 1980) (quoting Barber v. Page, 390 U.S. 719, 725, 88 S.Ct. 1318, 1322, 20 L.Ed.2d 255 (1968)); State v. D'Anna, 506 S.W.2d 200, 203 (Tenn. Crim. App. 1973). Subsequent to the preliminary hearing, however, the Petitioner was indicted by a Hamilton County grand jury. By independently finding probable cause that a crime had been committed and the Petitioner was implicated in its commission, the grand jury indictment cured the alleged conflict of interest error at the preliminary hearing.

Furthermore, the Petitioner pleaded guilty to the offense of aggravated kidnapping. It is well-established that a valid guilty plea constitutes an admission to all the facts alleged and is a waiver of all non-jurisdictional and procedural defects and constitutional infirmities in any prior stage of the proceeding. See, e.g., State v. Wilkes, 684 S.W.2d 663, 667 (Tenn. Crim. App. 1984); Beaty v. Neil, 467 S.W.2d 844, 847 (Tenn. Crim. App. 1971); Shepard v. Henderson, 449 S.W.2d 726, 729 (Tenn. Crim. App. 1969). The Petitioner has not challenged the voluntariness of his guilty plea through this issue. In fact, the trial court specifically stated in the order dismissing the post-conviction petition that the plea was entered "knowingly, voluntarily, and understandingly." As a result, we

conclude that the Petitioner, upon entering a plea of guilty to aggravated kidnapping, waived his complaint about the conflict of interest and his attorney's representation at the preliminary hearing.

In his second issue, the Petitioner argues that his counsel at the guilty plea proceeding, Alan Beard, rendered ineffective assistance of counsel by failing to raise the conflict of interest issue until the trial date, July 25, 1995. The Petitioner offered no detailed reasons why Beard's conduct constituted deficient representation, nor did he contend that but for counsel's alleged errors, he would not have pleaded guilty.

In determining whether or not counsel provided effective assistance at trial, the court must decide whether or not counsel's performance was within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930 (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 this 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).

This two part standard of measuring ineffective assistance of counsel also applies to claims arising out of the plea process. Hill v. Lockhart, 474 U.S. 52 (1985). The prejudice requirement is modified so that the petitioner “must show that there is a reasonable probability that, but for counsel’s errors he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59.

Applying the Strickland standard to the case sub judice, we believe that the Petitioner has failed to establish that his counsel’s representation at the guilty plea proceeding was constitutionally deficient. The Petitioner argues that counsel Alan Beard committed an unreasonable error by failing to assert the conflict of interest issue prior to his trial date. He has not alleged any reasons why counsel Beard did not raise the issue prior to trial.

The Petitioner’s argument ignores the fact that counsel Beard moved to dismiss the indictment due to counsel Dobson’s conflict of interest on the day of trial, July 25, 1995. The Petitioner has failed to suggest how raising the issue prior to his trial would have been any different from moving to dismiss the indictment on the day of trial, as counsel Beard did. In fact, from our review of the record, we believe that the conflict of interest issue was clearly without merit regardless of when raised by counsel Beard.

As we stated above, the indictment of the Petitioner cured the alleged conflict of interest error at the preliminary hearing. Thus, no matter when raised by counsel Beard, the conflict issue lacked merit. Accordingly, we can only conclude that the Petitioner has failed to establish that counsel Beard’s actions

concerning the conflict of interest issue constituted deficient representation. The Petitioner's second issue lacks merit.

We take this opportunity to note that a post-conviction petition alleging ineffective assistance of counsel often merits conducting an evidentiary hearing concerning the allegations. If, however, the facts alleged in the petition, taken as true, fail to show that the petitioner is entitled to relief, it is proper for the trial court to dismiss the petition without conducting an evidentiary hearing. See Tenn. Code Ann. § 40-30-206(f) (Supp. 1996). In the case sub judice, the Petitioner alleged that counsel Beard was ineffective for failing to raise the conflict of interest issue prior to trial. As we explained above, even if counsel Beard had raised the conflict issue earlier, the result would have been no different because the indictment cured the alleged conflict of interest error. Thus, Beard's failure to raise the meritless conflict issue prior to trial could not have prejudiced the Petitioner. The facts alleged by the Petitioner regarding counsel Beard's representation, even if taken as true, provide no basis for post-conviction relief. Given that circumstance, we believe the trial court properly dismissed the petition without conducting an evidentiary hearing.

For the reasons set forth in the discussion above, we conclude that the Petitioner has failed to demonstrate that the trial court erred in denying the petition for post-conviction relief. We therefore affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE

CONCUR:

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DAVID G. HAYES, JUDGE

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THOMAS T. WOODALL, JUDGE