

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
APRIL SESSION, 1997

RICKY TUCKER,)
)
 Appellant)
)
 vs.)
)
 STATE OF TENNESSEE,)
)
 Appellee)

No. 02C01-9606-CR-00196

SHELBY COUNTY

Hon. W. FRED AXLEY, Judge

(Post-Conviction)

FILED

July 10, 1997

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Appellate Court Clerk

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Ricky Tucker, appeals the Shelby County Criminal Court's denial of his petition for post-conviction relief. The appellant asserts that the trial court's jury instruction on reasonable doubt was unconstitutional.

After a review of the record, we affirm the trial court's judgment.

The appellant contends that the reasonable doubt instruction provided by the trial court is constitutionally invalid due to the use of the term "moral certainty" combined with the "mind rest easy" language. He argues that these phrases together could have allowed a reasonable juror to find him guilty based on a lower standard of proof than that required for guilt beyond a reasonable doubt. Although the Tennessee Supreme Court has recently held such jury charges to be constitutional, the appellant argues that those decisions do not apply to his case because the court did not specifically address the "mind rest easy" phrase. See State v. Nichols, 877 S.W.2d 722, 734 (Tenn. 1994) and Pettyjohn v. State, 885 S.W.2d 364, 365 (Tenn. Crim. App. 1994). This argument, however, is erroneous. In Nichols, the Tennessee Supreme Court held constitutionally valid an instruction which allowed "moral certainty" to be considered in conjunction with an instruction that "[r]easonable doubt is that doubt engendered by an investigation of all the proof in the case and an inability, after such investigation, to let the *mind rest easily* upon the certainty of your verdict," Id. (emphasis added). The appellate courts of this state have repeatedly found this jury instruction constitutionally valid. See State v. Sexton, 917 S.W.2d 263, 265-266 (Tenn. Crim. App. 1995) and Covington v. State, No. 01C01-9606-CC-00250 (Tenn. Crim. App. at Nashville, Sept. 30, 1996). This claim is without merit.

Therefore, we affirm the trial court's decision.

DAVID G. HAYES, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

WILLIAM M. BARKER, Judge