

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1998 SESSION

**FILED**  
**March 26, 1998**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

ANTHONY CICCHETTO, )  
 )  
 APPELLANT, )  
 )  
 v. )  
 )  
 STATE OF TENNESSEE, )  
 )  
 APPELLEE. )

No. 02-C-01-9706-CR-00210  
Shelby County  
Honorable W. Fred Axley, Judge  
(Post-Conviction Relief)

FOR THE APPELLANT:

William W. Nowlin  
Attorney at Law  
100 North Main Building  
Suite 3201  
Memphis, TN 38103

FOR THE APPELLEE:

John Knox Walkup  
Attorney General & Reporter  
425 Fifth Avenue, North  
Nashville, TN 37243-0493

Georgia B. Felner  
Counsel for the State  
425 Fifth Avenue, North  
Nashville, TN 37243-0493

William L. Gibbons  
District Attorney General  
201 Poplar Avenue, Suite 3-01  
Memphis, TN 38103

Rhea Clift  
Assistant District Attorney General  
201 Poplar Avenue, Suite 3-01  
Memphis, TN 38103

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

AFFIRMED PURSUANT TO RULE 20

Joe B. Jones, Presiding Judge

## OPINION

The appellant, Anthony Cicchetto (petitioner), appeals as of right from a judgment of the trial court dismissing his post-conviction action after an evidentiary hearing.<sup>1</sup> The trial court found the petitioner was afforded his constitutional right to the effective assistance of counsel; and the petitioner's guilty pleas passed constitutional muster. In this court, the petitioner contends the evidence contained in the record preponderates against the trial court's findings of fact. After a thorough review of the record, the briefs submitted by the parties, and the law governing the issue presented for review, it is the opinion of this court the judgment of the trial court should be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals.

The petitioner was required to establish the grounds litigated by "clear and convincing" evidence. Tenn. Code Ann. § 40-30-210(f). Thus, the petitioner was required to prove by clear and convincing evidence (a) the services rendered or advice given by counsel fell below "the range of competence demanded of attorneys in criminal cases," Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975) and (b) the unprofessional conduct of counsel enured to the prejudice of the petitioner. Williams v. State, 599 S.W.2d 276, 279 (Tenn. Crim. App.), per. app. denied (Tenn. 1980). The United States Supreme Court adopted this two-prong standard in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), the Supreme Court extended these same standards to cases where the petitioner entered a plea of guilty. In Hill, the prejudice prong was modified to require the petitioner to prove "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." Hill, 474 U.S. at 59, 106 S.Ct. at 370.

In this case, the petitioner failed to establish the grounds asserted by clear and convincing evidence. Moreover, assuming arguendo, the petitioner proved counsel's representation was deficient, he certainly did not establish how he was prejudiced. Finally, the evidence contained in the record does not preponderate against the trial court's

---

<sup>1</sup>Pursuant to a plea bargain agreement, the petitioner entered pleas of guilty to rape and was sentenced to serve eight (8) years, sexual battery and was sentenced to serve two (2) years, and forgery and was sentenced to serve two (2) years. The sentences are to be served concurrently.

findings of fact. Butler v. State, 789 S.W.2d 898, 899 (Tenn. 1990).

---

JOE B. JONES, PRESIDING JUDGE

CONCUR:

---

JOHN H. PEAY, JUDGE

---

THOMAS T. WOODALL, JUDGE