

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

DECEMBER 1997 SESSION

FILED
January 22, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 APPELLEE,)
)
)
)
 v.)
)
)
)
 WILBUR A. KERNEY, AKA)
 WILBUR ALLEN MINOR,)
)
 APPELLANT.)

No. 02-C-01-9608-CC-00264
Weakley County
William B. Acree, Jr., Judge
(Sentencing)

FOR THE APPELLANT:

Pamela J. Drewery
Attorney at Law
1008 West Forrest
Jackson, TN 38301

FOR THE APPELLEE:

John Knox Walkup
Attorney General & Reporter
500 Charlotte Avenue
Nashville, TN 37243-0497

Sarah M. Branch
Counsel for the State
450 James Robertson Parkway
Nashville, TN 37243-0493

Thomas A. Thomas
District Attorney General
P.O. Box 218
Union City, TN 38225

OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

Joe B. Jones, Presiding Judge

O P I N I O N

The appellant, Wilbur A. Kerney, also known as Wilbur Allen Minor (defendant), appeals as of right from a judgment of the trial court summarily denying his motion for a reduction or modification of his sentence pursuant to Rule 35, Tennessee Rules of Criminal Procedure. In this court, the defendant presents three issues for review. He contends (1) the affidavit of complaint was fatally defective,¹ (2) his sentence is subject to reduction or modification,² and (3) the trial court erred in refusing to grant him a hearing on his motion to stay, vacate, and remand the bind-over order.³ After a thorough review of the record, the briefs submitted by the parties, and the law governing the issues presented for review, it is the opinion of this court that the judgment of the trial court should be affirmed pursuant to Rule 20, Rules of Tennessee Court of Criminal Appeals.

JOE B. JONES, PRESIDING JUDGE

¹The entry of a guilty plea, which is voluntarily, understandingly and intelligently entered, constitutes a waiver of all procedural and constitutional defects in the proceedings that occurred prior to the entry of plea. See State v. Turner, 919 S.W.2d 346, 354 n.39 (Tenn. Crim. App. 1995), per. app. denied (Tenn. 1996). This is true regarding matters pertaining to the preliminary hearing stage of the proceedings. See Bland v. State, 2 Tenn. Crim. App. 77, 81, 451 S.W.2d 699, 701 (1969), cert. denied (Tenn. 1970). Moreover, the defendant does not challenge the constitutionality of the indictment which was returned in this cause.

²A trial court may in the exercise of its discretion refuse a request for a hearing on a Rule 35, Tennessee Rules of Criminal Procedure motion. The trial court did not abuse its discretion in this matter. The motion failed to state sufficient grounds on the face of the document to warrant a hearing. The defendant entered a plea of guilty pursuant to a plea bargain agreement, which contained an agreed upon sentence.

³See footnote 1.

CONCUR:

JERRY L. SMITH, JUDGE

CURWOOD WITT, JUDGE