

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
MAY SESSION, 1998

FILED

June 9, 1998

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee)
)
 vs.)
)
 JAMES D. CAULEY,)
)
 Appellant)

No. 01C01-9708-CR-00374

DAVIDSON COUNTY

Hon. SETH NORMAN, Judge

(Burglary)

For the Appellant:

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OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

David G. Hayes
Judge

OPINION

The appellant, James D. Cauley, appeals from an order entered in the Criminal Court for Davidson County dismissing his petition for post-conviction relief. The appellant contends that he was denied effective assistance of counsel.¹

After review, we affirm pursuant to Rule 20, Tenn. Ct. Crim. R. App.

BACKGROUND

On June 27, 1991, pursuant to a negotiated plea agreement, the appellant pled guilty to one count of burglary in the Davidson County Criminal Court and received a four-year sentence in the Department of Corrections. This sentence was ordered to run consecutive to three previous convictions for which the appellant was on parole when the burglary offense was committed.

The proof at the post-conviction hearing established that the State had advised the appellant by letter of June 10, 1991, that it would recommend, upon the appellant's plea to burglary, a four year sentence consecutive to his parole violation and concurrent to "whatever he gets in Springfield" (Robertson County Circuit Court).

At the guilty plea hearing on June 27, the State related to the court that, on the date of its initial plea offer, it had assumed that disposition of the Robertson County

¹The appellant also contends that "The Trial Court Erred in Failing to Recognize That The Department of Corrections Was Imposing An Illegal Sentence Upon The Defendant." In his brief, the appellant's claim is directed at the TDOC for "construing an ambiguity" and "imposing consecutive rather than concurrent sentences" for conviction occurring in Robertson County. This claim, which stems from the appellant's subsequent convictions in the Robertson County Circuit Court, fails to state a cognizable claim for post-conviction relief in the Davidson County Criminal Court, which is the situs of the case before us.

charges would be entered first.² The prosecutor and defense counsel agreed that, because no disposition had occurred in Robertson County, that portion of the agreement was inapplicable to the plea agreement. The following colloquy then occurred:

THE COURT: . . . - - I don't think I can order something concurrent to something that hasn't happened yet. You'd need to accomplish that in Robertson County. Now, if that affects this settlement -- do you need to talk to him about that?

. . .
THE COURT: Mr. Cauley, what I'm saying is since you haven't been sentenced in Robertson County, I - - there's nothing that I can order the sentence run concurrently to. You can't order a concurrent sentence to something that hasn't occurred -- to a sentence that hasn't been proposed.

. . .
MR. LOUGH: Your Honor, we've -- we've talked about this. And that's - -
THE COURT: Do you understand what we're talking about, Mr. Cauley?
DEFENDANT CAULEY: Yes, Your Honor.

Following the post-conviction hearing, the trial court dismissed the appellant's petition finding that the proof failed to establish that a breach of the plea agreement had occurred³ and that proof failed to support any of the appellant's claims.

In a post-conviction proceeding filed after May 10, 1995, the appellant has the burden of establishing his claims by clear and convincing evidence. Tenn. Code Ann. § 40-30-210(f) (1996 Supp.). Moreover, the findings of fact of a trial court have the weight of a jury verdict and are conclusive on appeal unless the evidence preponderates against its judgment. Davis v. State, 912 S.W.2d 689, 697 (Tenn. 1995). We conclude that the appellant has failed to carry his burden of establishing his claims. Moreover, we cannot conclude that the evidence preponderates against the trial court's findings of fact. As a result, we find no error of law mandating reversal of

²The Robertson County charges were entered on May 29, 1992.

³We are compelled to note that the appellant's conviction became final on July 27, 1991. Thus, under the Post-Conviction Act in effect at that time, the appellant had until July 27, 1994 in which to file a post-conviction petition. Tenn. Code Ann. § 40-30-102 (repealed 1995). The appellant did not file the instant petition until January 26, 1996, well outside the applicable limitations period. Thus, although the State did not rely upon the defense of the statute of limitations, we note that the instant action was time-barred.

the court's judgment. The post-conviction court's denial of the appellant's petition for post-conviction relief is affirmed in accordance with Tenn. Ct. Crim. R. App. 20.

DAVID G. HAYES, Judge

CONCUR:

GARY R. WADE, Presiding Judge

JERRY L. SMITH, Judge