

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL 1998 SESSION

FILED

August 27, 1998

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE, * C.C.A. # 01C01-9707-CR-00237
Appellee, * DAVIDSON COUNTY
VS. * Hon. Thomas H. Shriver, Judge
MARCUS L. NELSON, * (Aggravated Robbery)
Appellant. *

CONCURRING OPINION

In State v. King, ___ S.W.2d ___ (Tenn. 1998), our supreme court ruled that the charge on parole eligibility and early release was acceptable because the jury was provided the instruction on an "information only" basis. In my view, juries should not be allowed to weigh and consider parole eligibility in the context of innocence or guilt. Any error in giving the instruction in this instance, however, was harmless beyond doubt. The proof is overwhelming that the defendant committed the crimes for which he was convicted. So long as the jury understands that the statute at issue plays no part in the determination of guilt or innocence to any of the crimes defined in the instructions, convictions should be upheld on appeal. Otherwise, the ruling of this court in State v. Jason M. Weiskopf, No. 02C01-9611-CR-00381 (Tenn. Crim. App., at Jackson, Feb. 4, 1998), app. filed, (May 6, 1998), should control.

Gary R. Wade, Judge