

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
SEPTEMBER 1998 SESSION

FILED

October 23, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

KEITH A. GUY,)	
)	
Appellant,)	C.C.A. No. 02C01-9712-CC-00478
)	
V.)	Madison County
)	
STATE OF TENNESSEE,)	Honorable Franklin Murchison, Judge
)	
Appellee.)	(Post-Conviction)

FOR THE APPELLANT:

C. Michael Robbins
Attorney at Law
46 North Third Street, Suite 719
Memphis, TN 38103

George Morton Googe
District Public Defender

Vanessa D. King
Assistant Public Defender
227 West Baltimore Street
Jackson, TN 38301
(at trial)

___ FOR THE APPELLEE:

John Knox Walkup
Attorney General & Reporter

Georgia Blythe Felner
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425 Fifth Avenue North
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James G. (Jerry) Woodall
District Attorney General

Al Earls and
Don Allen
Assistant District Attorneys General
P.O. Box 2825
Jackson, TN 38302

OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The petitioner pled guilty to four counts of aggravated robbery, two counts of attempted aggravated robbery, and four counts of conspiracy to commit aggravated robbery. He received an effective thirty-year sentence for these crimes pursuant to his plea bargain. The petitioner took no direct appeal from his convictions or sentences but filed for post-conviction relief, alleging that his guilty plea was the result of ineffective assistance of counsel. After hearing the petitioner's testimony, the hearing court below granted the state's motion to dismiss and denied relief. Upon our review of the record, we affirm the court's judgment.

In post-conviction relief proceedings the petitioner has the burden of proving the allegations in his petition by clear and convincing evidence. T.C.A. § 40-30-210(f) (1997). Furthermore, the factual findings of the trial court in hearings "are conclusive on appeal unless the evidence preponderates against the judgment." State v. Buford, 666 S.W.2d 473, 475 (Tenn. Crim. App. 1983).

In reviewing the petitioner's Sixth Amendment claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). To prevail on a claim of ineffective counsel, a petitioner "must show that counsel's representation fell below an objective standard of reasonableness" and that this performance prejudiced the defense. There must be a reasonable probability that but for counsel's error the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 692, 694 (1984); Best v. State, 708 S.W.2d 421,

422 (Tenn. Crim. App. 1985). To satisfy the requirement of prejudice in this case, the petitioner would have had to demonstrate a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. See Hill v. Lockart, 474 U.S. 52, 59 (1985); Bankston v. State, 815 S.W.2d 213, 215 (Tenn. Crim. App. 1991).

The court below found the petitioner's allegations of ineffective assistance "just vague, indefinite, uncertain." We agree. The petitioner testified that his trial counsel "could have give[n] [me] a better job" but admitted that he had confessed his crimes to the police and that he received the exact sentence to which he agreed. The petitioner's allegations are without merit. The petitioner has failed to carry his burden of proving that his lawyer was ineffective.

PAUL G. SUMMERS, Judge

CONCUR:

DAVID H. WELLES, Judge

JOE G. RILEY, Judge