

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
November 20, 2019 Session

**FILED**  
02/21/2020  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. GLENN FRED GLATZ**

**Appeal from the Circuit Court for Sevier County  
No. 23369 James L. Gass, Judge**

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**No. E2019-00431-CCA-R3-CD**

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THOMAS T. WOODALL, J., concurring.

I join in the majority opinion except that portion of the opinion which examines the issue of evidence admitted in violation of Tennessee Rule of Evidence 404(b). This issue is waived. The State correctly argues it is waived. Defendant acknowledges the issue is waived, but seeks relief in plain error review.

In this case there is no need to provide *dicta* concerning the issue since relief by plain error review is not granted. Time and again, I have seen prosecutors and post-conviction courts rely upon such *dicta* as proof from this court's opinions that a petitioner is not entitled to post-conviction relief because this court concluded that even though waived, the issue had no merit.

I have reached the conclusion that, absent an order from the Tennessee Supreme Court to review a waived issue under plain error review, *see State v. Stephano Lee Weilacker*, No. M2016-00546-CCA-R3-CD, slip op. at 1, 2018 WL 5099779 (Tenn. Crim. App. Oct. 19, 2018), plain error review analysis should not be undertaken unless defendant's request for relief is to be granted.

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THOMAS T. WOODALL, JUDGE