

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

OCTOBER 1996 SESSION

FILED
November 8, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

RUSSELL MULLINS,

Appellant,

V.

STATE OF TENNESSEE,

Appellee.

)
) C.C.A. No. 02C01-9605-CR-00157
)
) Shelby County
)
) Honorable Arthur T. Bennett, Judge
)
) (Post-Conviction)
)
)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Russell Mullins, was indicted for felony murder and first degree murder. He pled guilty to second degree murder and received a sentence of 50 years as a Range III, persistent offender. The appellant filed a pro se petition for post-conviction relief arguing that the trial court erroneously classified him as Range III, persistent offender. The trial court summarily denied the claim on the basis that the appellant had waived any entitlement to a specific range of punishment by entering into a plea agreement.

The appellant filed a second pro se petition for post-conviction relief alleging that his counsel had been ineffective. After a hearing, the trial court denied relief. The appellant appeals this denial.

The appellant was sentenced to 50 years at 45% as a Range III, persistent offender. His release eligibility date is 22½ years. The appellant contends that his trial counsel had mistakenly represented that his 50 year sentence could be served by two and one-half to three years incarceration. He claims that this bad advice led to an unknowing, involuntary guilty plea. Trial counsel denied she gave the appellant this advice.

In order for the appellant to be granted relief on the ground of ineffective assistance of counsel, he must establish that the advice given or the services rendered were not within the competence demanded of attorneys in criminal cases and that, but for his counsel's deficient performance, the result of his trial would have been different. Strickland v. Washington, 466 U.S. 668 (1984). This two-part standard, as it applies to guilty pleas, is met when the appellant establishes that, but for his counsel's error, he would not have pled guilty and would have insisted on trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The record reveals that at the post-conviction hearing the appellant admitted the trial court judge informed him that he must serve 45% of his 50 year

sentence before becoming eligible for parole. He also admitted that he had completed the eleventh grade and could multiply 50 times 45%. It seems logical that the appellant did not need his trial counsel to perform such elementary math to adequately apprise him of his release eligibility date.

This Court finds that the appellant has failed to establish that he received ineffective assistance. The evidence does not preponderate against the hearing court's findings. This Court does not believe the appellant suffered a constitutional deprivation by counsel's not performing basic multiplication. We affirm the hearing court's judgment.

PAUL G. SUMMERS, Judge

CONCUR:

JOHN H. PEAY, Judge

DAVID G. HAYES, Judge