

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1997 SESSION

FILED

March 13, 1997

Cecil W. Crowson
Appellate Court Clerk

GARRY E. COLLINS,)
)
Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
Appellee.)

No. 01C01-9603-CR-00120

WILSON COUNTY

Hon. Bobby Capers, Judge

(Post-Conviction: First Degree
Felony Murder)

FOR THE APPELLANT:

B. KEITH WILLIAMS
102 East Main Street
Lebanon, TN 37087

FOR THE APPELLEE:

CHARLES W. BURSON
Attorney General and Reporter

LISA A. NAYLOR
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

TOM P. THOMPSON, JR.
District Attorney General

DAVID DURHAM
Assistant District Attorney General
111 Cherry Street
Lebanon, TN 37087

OPINION FILED: _____

REVERSED AND REMANDED

JOE G. RILEY,
JUDGE

OPINION

The appellant, Garry E. Collins, appeals the trial court's dismissal of his petition for post-conviction relief. Petitioner is serving a life sentence for the offense of first degree felony murder. The petition for post-conviction relief was summarily dismissed without a hearing. We reverse and remand to the trial court for appointment of counsel and an opportunity to amend the petition.

I

In his *pro se* petition for post-conviction relief, Collins requested that his guilty plea to first degree felony murder be set aside. He specifically alleged that the guilty plea was involuntary, and he was denied effective assistance of counsel. In support of his contention that the guilty plea was involuntary, he alleged that when the trial court accepted his plea, he was not informed that he would be waiving fundamental constitutional rights such as the right to a jury trial, the right not to incriminate himself, the right to an attorney at every critical stage of the proceedings and the right to confront and cross-examine witnesses against him. Collins further asserted that he was denied effective assistance of counsel because his appointed counsel failed to advise him of the above-mentioned rights. The trial court summarily dismissed the petition taking “. . . judicial notice of the curriculum (sic) vitae of the four (4) appointed counsel for the Defendant, and the properly executed Waivers of the Defendant . . .” The trial court relied on T.C.A. §40-30-106(d).

II

This case is controlled by the Post-Conviction Procedure Act of 1995. It provides, in part:

[t]he petition must contain a clear and specific statement of all grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings. Failure to state a factual basis for the grounds alleged shall result in immediate dismissal of the petition. . .

T.C.A. § 40-30-206(d).

Collins' allegations relating to the voluntariness of his guilty plea and

ineffective assistance of counsel state both a legal and factual basis which, if true, would entitle him to relief. The court may not take judicial notice of the qualifications of defense counsel and the contents of the waiver so as to conclusively determine the petition has no merit. Therefore, the petition should not have been dismissed pursuant to T.C.A. § 40-30-206(d). Counsel should be appointed to file an amended petition pursuant to T.C.A. § 40-30-206(e).

The judgment of the trial court is reversed, and the case is remanded for further proceedings consistent with this opinion.

JOE G. RILEY, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

JERRY L. SMITH, JUDGE