

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

NOVEMBER 1996 SESSION

EDDIE DEPRIEST,	)	No. 02C01-9512-CR-00384
	)	
Appellant	)	
	)	SHELBY COUNTY
V.	)	
	)	HON. JOSEPH B. BROWN, JR.,
STATE OF TENNESSEE,	)	JUDGE
	)	
Appellee.	)	(Post-Conviction)
	)	
	)	

For the Appellant:

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For the Appellee:

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OPINION FILED: \_\_\_\_\_

AFFIRMED PURSUANT TO RULE 20

William M. Barker, Judge

## OPINION

The appellant filed a petition for post-conviction relief, which the Shelby County Criminal Court dismissed after an evidentiary hearing. This appeal follows. We affirm.

Appellant, Eddie Depriest, was convicted of first degree murder and assault with intent to commit first degree murder in July of 1989. He was sentenced to life imprisonment for the first degree murder charge and received a fifteen (15) year concurrent sentence on the assault. Appellant's co-defendant, Gregory Williams, was convicted of the same crimes and sentenced likewise. On direct appeal, only the sufficiency of the evidence was challenged and this Court affirmed appellant's and Williams' convictions and sentences. State v. Gregory Dewayne Williams and Eddie Fitzgerald Depriest, No. 96, (Tenn. Crim. App. at Jackson, October 3, 1990). Counsel was then permitted by this Court to withdraw from further representation of appellant. An application for permission to appeal on behalf of appellant was filed late with the supreme court. Appellant filed a *pro se* petition for post-conviction relief in March of 1993, alleging ineffective assistance of counsel. After the appointment of counsel, several amended petitions were filed.

The appellant and his trial counsel both testified at the evidentiary hearing. Not surprisingly, their testimony conflicted on each material issue. After the evidentiary hearing, the trial court made findings of fact and determined that appellant had received the effective assistance of counsel at trial under the standards enumerated in Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). Specifically, the trial court found that petitioner's right to appeal was preserved by counsel as reflected by the appeal to the Court of Criminal Appeals. The trial court also found that counsel performed an adequate investigation prior to trial. Counsel visited the crime scene, consulted with the State, anticipated testimony to be elicited from the State's witnesses, and apprised the petitioner of the State's theory of the case. Further, the trial court found that

counsel contacted the alibi witness, interviewed him and made a tactical decision not to call him to testify because of potentially harmful testimony that he could provide. The trial court observed that another alibi witness did testify at the trial and yet another witness gave favorable testimony. The trial court also found that counsel's cross-examination of the State's witnesses was adequate and in-depth enough to develop the defense's theory of the case.

As stated, the testimony of the witnesses conflicted as to every material fact. Evaluating petitioner's claims amounted to nothing more than a determination of the credibility of the witnesses. By its ruling, the trial court clearly accredited the testimony of the trial attorney. This Court cannot re-weigh or re-evaluate the evidence, and questions about the credibility of the witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are resolved by the trial court. Black v. State, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990). We are bound to accept its determination, finding that the evidence does not preponderate against it. Id. See also Davis v. State, 912 S.W.2d 689, 697 (Tenn. 1995) (citations omitted); Cooper v. State, 849 S.W.2d 744, 746 (Tenn. 1993) (citation omitted). The evidence in the record fully supports the trial court's factual findings and we affirm its judgment pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

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William M. Barker, Judge

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Gary R. Wade, Judge

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David G. Hayes, Judge