

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
OCTOBER 1997 SESSION

FILED
December 18, 1997
Cecil W. Crowson
Appellate Court Clerk

JERRY WAYNE MARABLE,)
)
 APPELLANT,)
)
)
 v.)
)
)
 STATE OF TENNESSEE,)
)
 APPELLEE.)

No. 01-C-01-9611-CC-00493
Rutherford County
J. S. Daniel, Judge
(Post-Conviction Relief)

FOR THE APPELLANT:

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(Appeal Only)

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(Trial Court Only)

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

OPINION

The appellant, Jerry Wayne Marable (petitioner),¹ appeals as of right from a judgment of the trial court dismissing his action for post-conviction relief following an evidentiary hearing. The trial court found the petitioner received the effective assistance of counsel prior to and during the submission hearing, the petitioner's plea of guilty was understandingly, voluntarily, and intelligently entered, and the petitioner failed to establish the District Attorney General's Office engaged in prosecutorial misconduct. In this court, the pro se brief filed by the petitioner does not delineate an issue presented for review. It appears the petitioner asserts his innocence and claims he was denied his constitutional right to the effective assistance of counsel.

The record reflects the defendant was charged with the rape of a child under the age of thirteen. He was permitted to enter a plea of guilty to aggravated sexual battery and was sentenced as a Range I standard offender to confinement for eight and one-half years in the Department of Correction pursuant to a plea agreement. He advised the trial court he was not guilty of the offense in question because the charge was fabricated. He further stated he was entering the guilty plea for "my best interest for my family." The trial court refused to accept the plea unless the petitioner agreed there was a factual basis for his plea. The petitioner agreed there was a factual basis for his plea.

The petitioner failed to establish by clear and convincing evidence he was denied his constitutional right to the effective assistance of counsel. See Tenn. Code Ann. § 40-30-210(f). He did not testify in support of his grounds. Moreover, the petitioner did not establish the two-prong test established in Hill v. Lockart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). The submission hearing transcript reveals the petitioner was pleased with the services of the attorneys who represented him. Counsel met with the petitioner prior to the date he entered the guilty plea. Counsel revealed the information obtained, provided the petitioner with copies of statements, and spent several hours explaining the ramifications of a guilty plea. The trial court was extremely tolerant and patiently advised

¹The petitioner was indicted as "Jerry Wayne Marable A/K/A Jerry DeWayne Marable."

the petitioner of his rights. The court wanted to make sure the petitioner was in fact understandingly, intelligently, and knowingly pleading guilty to the lesser included offense of aggravated sexual battery.

This court is of the opinion the evidence contained in the record does not preponderate against the findings of fact made by the trial court.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

WILLIAM M. BARKER, JUDGE

JOE G. RILEY, JUDGE