

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MAY SESSION, 1997

FILED
January 30, 1998
Cecil W. Crowson
Appellate Court Clerk

VICTORIA VOADEN,)
)
Appellant,)
)
)
VS.)
)
STATE OF TENNESSEE,)
)
Appellee.)

C.C.A. NO. 01C01-9801-CC-00308

TROUSDALE COUNTY

HON. J. O. BOND
JUDGE

(Post-Conviction)

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED PURSUANT RULE 20

JERRY L. SMITH, JUDGE

OPINION

The Criminal Court for Trousdale County denied Appellant, Victoria Voaden, post-conviction relief from her conviction for the 1990 slaying of her husband. In this appeal, appellant presents the following issues for review:

(1) whether the trial court erred in dismissing Appellant's post conviction petition without a hearing and without appointing counsel;

(2) whether Appellant was denied effective assistance of counsel at trial.

After a review of the record, we affirm the judgment of the trial court pursuant to Court of Criminal Appeals Rule 20.

Appellant was convicted of first degree murder for the 1990 shooting of her husband. She appealed that conviction, raising the issue of ineffective assistance of counsel in the direct appeal. This Court affirmed her conviction, and her application to appeal to the Supreme Court was denied. State v. Victoria Voaden, No. 01C01-9305-CC-00151 (Tenn. Crim. App. Dec. 22, 1994), perm. app. denied May 1, 1995. Appellant subsequently filed this petition for post-conviction relief.

On May 16, 1996, the trial court found that Appellant's petition was timely filed but did not allege any allegations that had not been heard on direct appeal. The trial court summarily denied the post-conviction petition.

The law is well settled. Under T.C.A. § 40-30-206, the trial court shall enter an order dismissing the petition if, inter alia, it appears the ground asserted for relief has been previously determined on the merits by a court of competent jurisdiction. T.C.A. § 40-30-206(h). A majority of the factual bases alleged to constitute ineffectiveness of counsel were previously resolved by this Court on direct appeal. Ineffective assistance of counsel is generally a “single ground for relief” under the post-conviction statute. Cone v. State, 927 S.W.2d 579, 581-82 (Tenn. Crim. App. 1995) app. denied (Tenn. 1996), cert denied, ____ U.S. ____, 117 S. Ct. 309 (1996). “[T]he fact that such violation may be proved by multiple acts or omissions does not change the fact that there remains only one ground for relief.” McCray v. State, No 01C01-9108-CR-00255, slip op at 10 (Tenn. Crim. App. At Nashville, Sept. 11, 1992). A petitioner may not re-litigate previously determined grounds for relief simply by adding factual basis for an ineffective assistance of counsel claim. Cone, 927 S.W.2d at 581-82. Appellant offers no explanation as to why these additional alleged acts and omissions were not raised when the issue of counsel’s effectiveness was litigated on direct appeal. Therefore, the factual bases alleged to constitute ineffective counsel which were not raised on direct appeal are waived.

We therefore affirm the judgment pursuant to Court of Criminal Appeals Rule 20.

JERRY L. SMITH, JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

DAVID G. HAYES, JUDGE