

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JUNE 1998 SESSION

FILED

July 30, 1998

Cecil W. Crowson
Appellate Court Clerk

TONY EDWARD MEADOWS,)
)
 Appellant,)
)
 VS.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

NO. 01C01-9708-CR-00350

DAVIDSON COUNTY

HON. SETH NORMAN,
JUDGE

(Post-Conviction)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

**LEE MOORE,
SPECIAL JUDGE**

OPINION

The petitioner, Tony Edward Meadows, appeals the dismissal of his petition for post-conviction relief. Petitioner pleaded guilty to three (3) counts of aggravated burglary in Case No. 94-D-2180; two (2) counts of aggravated burglary in Case No. 94-D-2181; and two (2) counts of aggravated burglary in Case No. 94-D-2128. Petitioner received an effective sentence of eighteen (18) years as a Range I Offender. Petitioner was ordered to serve five (5) years on community corrections and the remaining thirteen (13) years on supervised probation. In April, 1996, petitioner's sentence on community corrections was revoked and his original sentence was imposed. On appeal, petitioner raises the issue of ineffective assistance of counsel for the following reasons:

1. Petitioner's plea was not made voluntarily, intelligently and understandably as a result of trial counsel's omissions.
2. Trial counsel made little or no independent investigation of the facts and circumstances surrounding the charges.
3. Trial counsel failed to adequately inform petitioner of the law and defenses of petitioner's case.
4. Trial counsel failed to zealously represent petitioner during plea negotiations.

After a review of the post-conviction record on appeal and the applicable law, the Court affirms the judgment of the trial court.

PROCEDURAL HISTORY

In October, 1994, petitioner was indicted under three (3) separate indictments with multiple charges of aggravated burglary and theft. On January 12, 1995, petitioner pleaded guilty to three (3) counts of aggravated burglary in Case No. 94-D-2180; two (2) counts of aggravated burglary in Case No. 94-D-2181; and

two (2) counts of aggravated burglary in Case No. 94-D-2128. Petitioner received an effective eighteen (18) year sentence as a standard Range I Offender. Petitioner, however, was ordered to serve five (5) years on community corrections with the remainder of his sentence to be served on supervised probation.

On May 26, 1995, petitioner's community corrections sentence was revoked, and the original sentence was reinstated. On August 8, 1995, petitioner filed a petition for post-conviction relief. On September 6, 1995, petitioner filed a motion for reduction and modification of sentence. The motion was granted on December 1, 1995, and petitioner withdrew his petition for post-conviction relief. Petitioner was placed back on community corrections under the same terms and conditions as originally set forth in his plea of guilty on January 12, 1995. On April 26, 1996, the Court again revoked petitioner's sentence on community corrections and reinstated the original sentence invoked on January 12, 1995. Petitioner then on May 7, 1996, filed the present petition for post-conviction relief. By order filed on May 20, 1996, the Court appointed the Honorable James G. King to represent petitioner. On September 30, 1996, petitioner's court appointed attorney filed "Amended Petition For Post-Conviction Relief." The state responded to the amended petition by denying the factual allegations contained therein. A hearing was conducted on the amended petition for post-conviction relief on January 15, 1997. On March 25, 1997, the trial court filed an opinion. On April 1, 1997, attorney Greg King was appointed to represent petitioner for the purposes of his appeal. Notice of Appeal was timely filed on April 1, 1997.

INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner alleges the assistance rendered by trial counsel was ineffective for the reasons stated above.

A.

The Court reviews the claim of ineffective assistance of counsel under the standards of Baxter v. Rose, 523 S.W.2d 930 (Tenn. 1975), and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The petitioner has the burden to prove that (1) the attorney's performance was deficient, and (2) the deficient performance resulted in prejudice to the defendant so as to deprive him of a fair trial. Strickland v. Washington, 466 U.S. at 687, 104 S.Ct. at 2064; Goad v. State, 938 S.W.2d 363, 369 (Tenn. 1996); Overton v. State, 874 S.W.2d 6, 11 (Tenn. 1994); Butler v. State, 789 S.W.2d 898, 899 (Tenn. 1990). This two part standard of measuring ineffective assistance of counsel also applies to claims arising out of the plea process. Hill v. Lockhart, 474 U.S. 52, 88 L.Ed.2d 203, 106 S.Ct. 366 (1985). The prejudice requirement is modified so that the petitioner "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial". Id. at 59.

The test in Tennessee in determining whether counsel provided effective assistance is whether his performance was within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d at 936. The petitioner must overcome the presumption that counsel's conduct falls within the wide range of acceptable professional assistance. Strickland v. Washington, 466 U.S. at 689, 104 S.Ct. at 2065; Alley v. State, 958 S.W.2d 138, 149 (Tenn. Crim. App. 1997); State v. Williams, 929 S.W.2d 385, 389 (Tenn. Crim. App. 1996).

In post-conviction proceedings, the petitioner has the burden of proving the allegations contained in his petition. Butler v. State, 789 S.W.2d at 899. The trial court's findings after a post-conviction hearing are conclusive unless evidence preponderates against the judgment. Id.

B.

Petitioner, Tony Edward Meadows, testified that trial counsel made little or no independent investigation of facts and circumstances surrounding his case. He also alleged that trial counsel failed to adequately inform him of the law and the defenses of this case, and further that trial counsel failed to zealously represent him during the plea negotiations. Petitioner testified that he and his mother tried on numerous occasions to contact trial counsel, but the only time he saw him was on January 12, 1995, on the "plea day". He testified that on January 12, 1995, he had a discussion with his attorney of approximately ten minutes, and at that time was advised that the state was offering him eighteen (18) years on community corrections or a trial after which he would probably get forty (40) years. He testified that trial counsel advised him that he would be pleading guilty to seven (7) charges. He states, however, that he was not advised of the ramifications of his plea. He states that he did not know that the sentences would run consecutive until he got to prison. When asked by post-conviction counsel if there were anything else he would like to add, petitioner stated, "just that if the court sees fit, to please run my sentences concurrent, so I can get on with my life." It appears that the gist of the complaint at this time is that the sentences run consecutively rather than concurrently. In fact, on cross-examination, petitioner stated that he filed a petition for post-conviction relief that was later converted to a Rule 35 motion after which he was placed back on community corrections. As stated hereinabove, his sentence to community corrections had been revoked earlier. On cross-examination, petitioner also indicated that he had confessed to the police about the burglaries in question. He indicated that he cooperated with the police regarding sixteen (16) various burglaries in sixteen (16) various homes.

Trial counsel testified that he filed no suppression motions because petitioner had given statements to the police, and he had nothing in his file to indicate that there was anyway to attack the confessions. He indicated that before he had been appointed to represent petitioner that the petitioner through a public defender had already "struck a deal" with the District Attorney General, and petitioner wanted to

make sure that he got the deal. The deal appeared to have been a plea of guilty to six (6) counts for an effective sentence of eighteen (18) years. He indicated that the District Attorney General later told him that the deal involved a plea to seven (7) counts rather than six (6) counts. Trial counsel's claim for attorney fees indicated that he met with petitioner on December 7, 1994, for approximately one-half (1/2) hour. Thereafter, he filed discovery motions and then reviewed the response to discovery. On January 11, 1995, he had a conference with his client for approximately three-quarters (3/4) of an hour at the jail. He also testified that he read all plea petitions to his clients because he knew the words could be confusing to people who are not familiar with the petitions. He indicated also that he always advised his clients as to whether or not the sentences would run concurrently or consecutively. He testified that petitioner never indicated that he was not guilty of any of the charges nor that he wanted to go to trial on any of the charges. He stated that this plea bargain gave petitioner a chance. If he had not violated his community corrections, he would have been able to remain free. Trial counsel felt that the plea agreement had accomplished what petitioner had wanted with the numerous charges against him.

Thereafter, the trial court denied the petition, stating specifically that the petitioner only complained about his assistance of counsel when he was incarcerated. After filing the first petition for post-conviction relief, he was released on a Rule 35 motion and, thereafter, failed to pursue the petition for post-conviction relief. He made no further complaints until he had violated the terms and conditions of his release for a second time and was thereafter incarcerated.

C.

The record available reflects that the trial court properly found that petitioner entered a guilty plea voluntarily and knowingly. Since the guilty plea hearing was

not made a part of the record on appeal, the Court is required to assume that the trial court made proper findings regarding that issue. It is the duty of appellant to prepare a record which conveys a fair, accurate, and complete account of what transpired in the trial court with respect to the issues which form the basis of an appeal. Tenn. R. App. P. 24 (b); State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991). When an appellant fails to include necessary portions of the record on appeal regarding an issue, an appellate court is precluded from considering the merits of the issue. See Tenn. R. App. P. 24 (b); State v. Ballard, 855 S.W.2d 557, 561 (Tenn. 1993).

Petitioner has also failed to meet his burden of proof. Petitioner has failed to overcome the presumption that trial counsel's conduct falls within the wide range of acceptable professional assistance. There is no evidence to indicate that petitioner's plea of guilty was not made voluntarily and knowingly. Even if there were deficient performance, petitioner has failed to carry his burden of proof that such deficient performance resulted in prejudice. There is no evidence to show that there was a reasonable probability that, but for any alleged error of counsel, petitioner would not have pleaded guilty and would have insisted on going to trial. Petitioner has not shown that there was a reasonable probability of a successful defense even if the cases had gone to trial. Petitioner's own testimony reveals that he confessed to the various burglaries, and there is no evidence that there would be any reason for a suppression of any confession. There is no evidence in the record to indicate that a more independent investigation by trial counsel would have produced any more favorable results or that any further information to petitioner regarding the applicable law and defenses would have produced any better results. There is no evidence in the record that trial counsel failed to zealously represent petitioner during plea negotiations.

Accordingly, the judgment of the trial court is **AFFIRMED**.

LEE MOORE, SPECIAL JUDGE

CONCUR:

CURWOOD WITT, JUDGE

JOE G. RILEY, JUDGE

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE**

TONY EDWARDS MEADOWS,)	
)	C.C.A. No. 01C01-9708-CR-00350
Appellant,)	
)	Davidson County Nos. 94-D-2128,
vs.)	94-D-2180, 94-D-2481
)	
)	(Post-Conviction)
STATE OF TENNESSEE,)	
)	AFFIRMED
Appellee.)	

JUDGMENT

Came the appellant, Tony Edward Meadows, by counsel, and the state, by the Attorney General, and this case was heard on the record on appeal from the Criminal Court of Davidson County; and upon consideration thereof, this Court is of the opinion that there is no reversible error in the judgment of the trial court.

It is, therefore, ordered and adjudged by this Court that the judgment of the trial court is **AFFIRMED**, and the case is remanded to the Criminal Court of Davidson County for execution of the judgment of that court and for collection of costs accrued below.

It appears that appellant is indigent. Costs of appeal will be paid by the State of Tennessee.

Per Curiam

Lee Moore, Special Judge
Joe G. Riley, Judge
Curwood Witt, Judge