

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 29, 2016

**MELVIN JAMES BRANHAM v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Sevier County  
No. 09-090 Richard R. Vance, Judge**

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**No. E2016-00157-CCA-R3-PC Filed – July 15, 2016**

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The Petitioner, Melvin James Branham, appeals the Sevier County Circuit Court’s denial of his petition for post-conviction relief from his 2012 conviction for robbery and his fifteen-year sentence. The Petitioner contends that he received the ineffective assistance of counsel. We affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and ROBERT L. HOLLOWAY, JR., JJ., joined.

Jessica S. Sisk, Newport, Tennessee, for the appellant, Melvin James Branham.

Herbert H. Slatery III, Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; James Dunn, District Attorney General; and Ronald C. Newcomb, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

This case arises from the Petitioner’s robbing and stabbing Jeffrey Prather on April 27, 2010. Although the Petitioner was indicted for especially aggravated robbery and proceeded to trial, the Petitioner pleaded guilty to robbery after the victim testified. The Petitioner agreed to a fifteen-year sentence as a career offender with 60% service. The Petitioner remained on bond for thirty days upon entering his guilty plea and was ordered to report to a probation officer the following day to obtain an ankle monitor. While released on bond, the State filed a motion to revoke the Petitioner’s bond on the grounds that the ankle monitor had been removed and that the Petitioner had admitted to consuming marijuana, Roxycodone, and Morphine since entering his guilty plea. After a hearing, the trial court revoked the Petitioner’s bond because of the Petitioner’s admitted illegal drug use. The court

found that the purposes of bond included ensuring attendance at court proceedings and the safety of the community and of the Petitioner. The court found that implicit in any type of release was a prohibition against engaging in criminal activity. *See State v. Melvin J. Branham*, No. E2013-00638-CCA-R3-CD, 2014 WL 869552, at \*1-3 (Tenn. Crim. App. Mar. 4, 2014), *perm. app. denied* (Tenn. Sept. 24, 2014).

The Petitioner sought to withdraw his guilty plea after his bond was revoked and argued that his truthful statements to a probation officer regarding his drug use were not a proper reason to revoke his bond. The Petitioner claimed a manifest injustice existed because he was never informed any drug use would violate the terms of the plea agreement. The trial court denied the Petitioner's request and found that the Petitioner freely, voluntarily, and knowingly waived his right to a jury trial and that he pleaded guilty to robbery. *Id.* at \*3-4. On appeal, this court determined that the Petitioner knowingly and voluntarily entered his guilty plea and that his drug use violated the conditions of his bond, not his plea agreement. *Id.* at \*5-6.

On April 21, 2014, the Petitioner sought post-conviction relief. He contended that he received the ineffective assistance of counsel and argued that counsel did not properly advise him of the terms of the plea agreement, that he "was unclear . . . as to the plea" agreement, and that he was unclear about the service of the sentence. The Petitioner stated he would not have agreed to fifteen years at 60% service. The Petitioner also argued that counsel erroneously sought appellate review of his bond revocation pursuant to Tennessee Rule of Appellate Procedure 3, rather than Rule 8.

At the post-conviction hearing, the Petitioner testified that according to the Tennessee Department of Correction, his sentence was fifteen years at 60% service. He had no previous convictions. He said that he stopped the trial and pleaded guilty "due to the lack thereof of the representation through the outcome of the trial" by counsel. The Petitioner agreed that during the guilty plea hearing, the trial judge asked if the Petitioner was pleased with counsel's representation and that the Petitioner said he was pleased because of the plea agreement.

The Petitioner testified that he and counsel had two telephone conversations regarding his case, that they met at counsel's office two days before the trial, and that a court hearing was held the day after their meeting. The Petitioner said that although counsel had the State's discovery materials, counsel did not review them with him. The Petitioner said that he asked counsel to hire an investigator and a forensic expert to interpret the blood spatter but that counsel refused because counsel did not believe the trial court would grant a request for funds. The Petitioner said that he provided counsel a list of witnesses during one of their

telephone conversations but that counsel told the Petitioner that counsel did not interview them.

The Petitioner testified that about one week before the trial, the State's plea offer was for especially aggravated robbery as a Range I offender but that the State offered to lower the charge two hours after the trial began. He said that counsel showed him a chart reflecting the possible sentences and that the State offered eight years for aggravated robbery. The Petitioner said that counsel and the prosecutor spoke again during a recess and that the State offered fifteen years for robbery at 60% service. The Petitioner said counsel explained that the Petitioner would be released from prison faster with a robbery conviction than if he pleaded guilty to aggravated robbery, a crime of violence, and that the Petitioner would serve no more than four years. The Petitioner said he did not understand the range system and learned after entering prison that he could serve his entire fifteen-year sentence. The Petitioner said counsel did not explain that the service requirement was a release eligibility date, not a parole date. The Petitioner said he did not receive a notice of sentence enhancement from the prosecutor.

The Petitioner testified that he accepted the plea agreement because he felt "backed into a corner" and that the offer was better than being convicted of a Class A felony. He said that he was not satisfied with counsel's representation but that everything occurred quickly.

The Petitioner testified that based upon his discussion with counsel, he understood the terms of the plea agreement but that he did not realize counsel's stating he would be paroled in four years was wrong. The Petitioner said that he did not ask questions at the guilty plea hearing because he did not have questions regarding his sentencing range at that time. He said that the terms of the plea agreement included his remaining on bond, that he obtained an ankle monitor from a probation officer, and that his bond was ultimately revoked.

The Petitioner testified that he wanted to withdraw his guilty plea because he did not understand counsel's advice regarding the service requirement but that counsel told him the best argument to support withdrawing the plea was the State did not honor the "thirty-day plea agreement." The Petitioner said counsel never argued that the Petitioner did not understand the terms of the plea agreement. Relative to the appeal of the motion to withdraw, the Petitioner said that counsel stated he would file an appeal and that the Petitioner's family retained counsel for the appeal.

The Petitioner testified relative to his appeal that he wrote counsel letters and that counsel responded, although he and counsel had differing opinions about which issue to raise. The Petitioner said that he wanted counsel to appeal the trial court's denial of the Petitioner's motion to withdraw his guilty plea and to argue that the Petitioner was unaware

of the “full implications” of the plea agreement. The Petitioner said counsel believed that the proper argument was the State failed to honor the thirty-day commitment and that the Petitioner’s drug use was not a proper ground to revoke bond. The Petitioner said he and counsel did not discuss the conditions of his bond.

The Petitioner testified that after this court released its opinion, counsel attempted to be relieved as counsel but that counsel’s motion was denied. The Petitioner said that counsel agreed to appeal the case to the supreme court but that counsel appeared exhausted with the case. The Petitioner believed that counsel could have done more work on his case before the trial began, that counsel did less work because he was not paid in advance, and that after the Petitioner’s family retained counsel for the appeal, the Petitioner began receiving documents and appellate briefs. The Petitioner said that he told counsel he acted in self-defense, that counsel did not raise self-defense at the trial, and that counsel had no defense strategy. The Petitioner said the lack of money prevented the use of experts and investigators.

On cross-examination, the Petitioner testified that he received the discovery materials from a previous attorney, not counsel. The Petitioner said that he identified the Petitioner’s former girlfriend as a potential trial witness and agreed the girlfriend was a State’s witness, although she did not testify. The Petitioner said the girlfriend would have testified that he came to her home after the incident, that he was distraught, and that he told her he was involved in an altercation with another man. The Petitioner said he also identified his mother as a potential trial witness. He recalled that he borrowed money from his mother about one and one-half hours after the incident and said that if he had robbed the victim, he would not have needed to borrow money from his mother. The Petitioner said he told counsel this information.

After reviewing the transcript of the guilty plea hearing, the Petitioner testified that his career offender status was discussed but that he was unsure if he understood it. He agreed that he did not ask questions about his offender status and that the trial court advised him of his constitutional rights. The Petitioner agreed that his release eligibility date was discussed and that the prosecutor stated the Petitioner was required to serve 60% of his sentence. He admitted he did not ask the trial judge questions about the substance of his guilty plea agreement. After reviewing his written plea agreement, he said it reflected a career offender status requiring 60% service of his fifteen-year sentence and his signature. The Petitioner agreed the plea agreement and transcript did not state he would be released from confinement after serving four years.

After reviewing the transcript of the motion to withdraw his guilty plea, the Petitioner testified that counsel did not mention the Petitioner’s career offender status, the lack of

witnesses presented at the trial, or the Petitioner's release after four years. The Petitioner agreed he did not ask questions at the motion hearing.

The Petitioner testified that counsel raised an issue on appeal related to the Petitioner's failure to understand he was prohibited from using drugs while on bond after entering his guilty plea. The Petitioner said counsel never argued a manifest injustice existed justifying withdraw of his guilty plea. The Petitioner admitted he knew consuming marijuana was illegal while he was on bond.

Counsel testified that he and the Petitioner reviewed the State's discovery materials twice, which included police reports, photographs of the victim's injuries, and the Petitioner's girlfriend's statement to the police. Counsel noted that he was not the Petitioner's original attorney and said that the Petitioner was knowledgeable about the discovery before counsel's appointment. Counsel said he and the Petitioner discussed trial strategy and the theory of the case. Counsel said his theory was that the Petitioner and the victim were involved in a "drug deal gone bad," that a fight ensued, and that during the fight, the victim was accidentally stabbed in the neck.

Counsel testified that the Petitioner did not provide a list of witnesses, although they discussed the Petitioner's girlfriend, and that counsel concluded she was an unfavorable witness for the defense. Counsel did not recall discussing any additional potential witnesses. After reviewing the terms of the plea agreement, counsel said the Petitioner agreed to plead guilty to robbery as a career offender with a fifteen-year sentence at 60% service. He said that he and the Petitioner reviewed the terms of the plea offer and that although the Petitioner was not a career offender, the agreement increased the offender classification in exchange for reducing the charge from a Class A to a Class C felony. Counsel considered the reduction in felony classification a benefit because Class A felonies included mandatory sentences.

Counsel testified that he and the Petitioner discussed the release eligibility date and the percentage of the sentence the Petitioner would serve before becoming eligible for release. Counsel recalled telling the Petitioner that release was not guaranteed once the Petitioner served the required percentage. Counsel said that he did not tell the Petitioner that he would be released after serving four years and that he did not recall telling the Petitioner he would be released after serving any specified amount of time. Counsel said he and the Petitioner probably had a general discussion about the benefit of good-time credit in obtaining parole. Counsel said that after their discussion, he was comfortable proceeding with the guilty plea hearing and believed the Petitioner was knowingly and voluntarily pleading guilty. Counsel said that although he wanted the Petitioner to continue with the trial, the plea offer was beneficial. Counsel noted that the Petitioner's failure to appear charge was dismissed pursuant to the agreement.

Counsel testified that he was prepared for the trial and that the strategy was to cross-examine the State's witnesses aggressively. Counsel said that the Petitioner did not request a forensic expert or an investigator but that they discussed having no need for a forensic expert or an investigator because the drug deal and altercation occurred inside a car. Counsel determined based upon the facts of the case that no investigation could have revealed how the victim was stabbed in the neck during a fight inside a car.

Counsel testified that based upon his reading of this court's opinion in the Petitioner's case, he believed the appeal of the bond revocation should have been appealed when the bond conditions were imposed, rather than waiting until after the trial.

On cross-examination, counsel testified that the trial began about one year after he was appointed to the Petitioner's case and that he recalled meeting with the Petitioner twice, although they could have met more. Counsel said that before the Petitioner's case, he had worked on two or three major felony cases and that the cases resulted in plea agreements. He recalled previously representing two clients charged with robbery.

Counsel testified that he determined early during his representation the Petitioner's girlfriend was an adverse witness, although counsel did not interview her. Counsel said he was familiar with the procedure for obtaining funds to hire investigators and expert witnesses. He denied telling the Petitioner that the Petitioner would have to pay for an investigator and a forensic expert and telling the Petitioner that the trial court would deny a request for funds. Counsel said it was possible he told the Petitioner that the court might deny a request for funds based upon the facts of the case.

Counsel testified that although he did not recall a sentence enhancement notice in the discovery materials, he thought he received one. He said that after the State's first trial witness testified, the prosecutor approached counsel with the plea offer during a short recess. He recalled that the offer expired at the end of the recess and that he and the Petitioner discussed the offer for approximately fifteen to thirty minutes. Counsel said that the Petitioner did not immediately accept the offer, that the Petitioner was concerned about the amount of time he would serve, that they "talked through it," and that the Petitioner accepted the offer. Counsel said they discussed the benefit of lowering the charge to a Class C felony but increasing the offender classification and the potential for appellate relief if the Petitioner chose to proceed with the trial and was convicted. Counsel said that when the Petitioner entered his guilty plea, the Petitioner showed no hesitancy.

Counsel testified that pursuant to the plea agreement, the Petitioner's bond was continued for thirty days and that counsel argued at the bond revocation hearing the State had violated the plea agreement by attempting to have the Petitioner's bond revoked. Counsel

agreed that he questioned the probation officer at the hearing about whether refraining from using drugs was a condition of the Petitioner's bond and that counsel argued no order was entered after the guilty plea hearing stating that the Petitioner was prohibited from using drugs. Counsel said that although the original bond order entered before the trial prohibited the Petitioner from using drugs, counsel argued that the original order expired when the Petitioner entered his guilty plea. Counsel said he did not believe the trial court or the parties mentioned the Petitioner's remaining on the conditions of his original bond. Counsel said he attempted to highlight that revoking the Petitioner's bond before the thirty days expired was moot because the Petitioner had already been sentenced and would spend years in prison.

Counsel testified that at the hearing on the motion to withdraw the Petitioner's guilty plea, counsel argued the State breached a material aspect of the plea agreement by revoking the Petitioner's bond and that the bond should not have been revoked. Counsel said he researched the manifest injustice standard for withdrawing a guilty plea and reviewed another attorney's research.

Counsel testified that he understood he was obligated as appointed counsel to appeal the Petitioner's case and that the appeal focused on the motion to withdraw the Petitioner's guilty plea based upon the evidence presented at the bond revocation hearing. Counsel said he researched the matter extensively but noted little case law existed at the time of the appeal. Counsel said he also discussed the case with another attorney. Counsel said that he thought he sought an appeal pursuant to the proper appellate procedural rule but that this court disagreed. Counsel said he sought appellate relief as a matter of right, rather than pursuant to the bond revocation rule. Counsel said that he never accepted payment from the Petitioner relative to the appeal and that any money the Petitioner paid was related to an escape charge. Counsel said that he and the Petitioner discussed what issues to raise on appeal and that he did not recall the Petitioner's stating he did not understand the terms of the plea agreement.

On redirect examination, counsel testified that the Petitioner did not indicate he decided to plead guilty because the Petitioner believed counsel was "bombing the trial" or was an "utter disaster as his lawyer."

The post-conviction court denied relief. The court determined that the guilty plea transcripts and forms showed that at a recess during the trial, the Petitioner and counsel discussed the various service requirements regarding sentencing. The court found that the Petitioner was fully advised of his rights, that the Petitioner had an opportunity to ask the trial court questions, and that the Petitioner told the trial court that he understood all of his rights and the terms of the plea agreement. The post-conviction court noted that the Petitioner did not ask questions relative to the agreement or to sentencing.

The post-conviction court found that counsel was the second or third attorney who represented the Petitioner and that counsel received previous counsel's file and the State's discovery materials. The court found that counsel investigated the Petitioner's girlfriend, who was the sole witness proposed by the Petitioner, and determined that she was an unfavorable witness. Relative to the bond revocation, the court found that counsel raised the issue on appeal. The court found that the Petitioner understood the plea agreement, the consequences of entering his guilty plea, and the sentencing range. The court determined that the Petitioner had not presented evidence that a manifest injustice had occurred requiring withdrawal of the plea.

The post-conviction court found that counsel perfected an appeal and raised the appropriate issues. The court found that although counsel sought appellate relief pursuant to Tennessee Rule of Appellate Procedure 3, this court addressed the issues of whether the Petitioner's guilty plea was knowing and voluntary and whether the trial court erred by revoking the Petitioner's bond.

The post-conviction court determined that the Petitioner failed to prove by clear and convincing evidence that he received the ineffective assistance of counsel. The court determined that counsel properly advised the Petitioner and that the Petitioner's decision to enter his guilty plea was based upon advice from counsel and the trial court. This appeal followed.

The Petitioner contends that he received the ineffective assistance of counsel. He argues that counsel failed to meet sufficiently with the Petitioner to prepare for the trial, failed to investigate adequately potential witnesses identified by the Petitioner, failed to obtain an investigator and forensic expert, and did not pursue the appeal properly, which effectively barred any form of appellate relief. The State responds that the Petitioner failed to prove he received the ineffective assistance of counsel.

Post-conviction relief is available "when the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." T.C.A. § 40-30-103 (2012). A petitioner has the burden of proving his factual allegations by clear and convincing evidence. *Id.* § 40-30-110(f) (2012). A post-conviction court's findings of fact are binding on appeal, and this court must defer to them "unless the evidence in the record preponderates against those findings." *Henley v. State*, 960 S.W.2d 572, 578 (Tenn. 1997); *see Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). A post-conviction court's application of law to its factual findings is subject to a de novo standard of review without a presumption of correctness. *Fields*, 40 S.W.3d at 457-58.

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To establish a post-conviction claim of the ineffective assistance of counsel in violation of the Sixth Amendment, a petitioner has the burden of proving that (1) counsel’s performance was deficient and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see Lockhart v. Fretwell*, 506 U.S. 364, 368-72 (1993). The Tennessee Supreme Court has applied the *Strickland* standard to an accused’s right to counsel under article I, section 9 of the Tennessee Constitution. *See State v. Melson*, 772 S.W.2d 417, 419 n.2 (Tenn. 1989).

A petitioner must satisfy both prongs of the *Strickland* test in order to prevail in an ineffective assistance of counsel claim. *Henley*, 960 S.W.2d at 580. “[F]ailure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim.” *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996). To establish the performance prong, a petitioner must show that “the advice given, or the services rendered . . . , are [not] within the range of competence demanded of attorneys in criminal cases.” *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975); *see Strickland*, 466 U.S. at 690. The post-conviction court must determine if these acts or omissions, viewed in light of all of the circumstances, fell “outside the wide range of professionally competent assistance.” *Strickland*, 466 U.S. at 690. A petitioner “is not entitled to the benefit of hindsight, may not second-guess a reasonably based trial strategy by his counsel, and cannot criticize a sound, but unsuccessful, tactical decision.” *Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994); *see Pylant v. State*, 263 S.W.3d 854, 874 (Tenn. 2008). This deference, however, only applies “if the choices are informed . . . based upon adequate preparation.” *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992). To establish the prejudice prong, a petitioner must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

Relative to the Petitioner's claim that counsel provided ineffective assistance by failing to meet sufficiently with the Petitioner to prepare for the trial and failing to investigate the potential witnesses he identified, the record reflects that the post-conviction court properly denied relief. Upon counsel's appointment to the Petitioner's case, he and the Petitioner reviewed the discovery materials, although counsel believed the Petitioner was knowledgeable about the facts of the case as a result of having reviewed the materials with a previous attorney. Counsel and the Petitioner met twice, possibly more, before the trial, and the Petitioner conceded they discussed the case on the telephone twice. Counsel and the Petitioner discussed the incident, reviewed the discovery materials, which included the police report, photographs of the victim's injuries, and the Petitioner's girlfriend's statement to the police, and discussed trial strategy and the theory of the case. Counsel, likewise, received and reviewed the Petitioner's previous attorney's file. Counsel concluded upon investigation that the Petitioner and the victim were involved in a drug deal, that a fight ensued, and that an accidental stabbing occurred during the fight. Counsel prepared for the trial based upon the chosen theory and determined that the best strategy was to cross-examine the State's witnesses aggressively.

The post-conviction court credited counsel's testimony that he did not receive a list of potential witnesses from the Petitioner, although they discussed the Petitioner's girlfriend. After reviewing the police reports and the girlfriend's statement to the police, counsel determined the girlfriend was an unfavorable witness. We note the Petitioner testified that his girlfriend would have testified that he came to her home after the altercation with the victim, that the Petitioner was distraught, and that the Petitioner admitted he was involved in an altercation with another man. Furthermore, counsel's credited testimony shows that the Petitioner did not mention any additional potential witnesses, although the Petitioner identified his mother as a potential witness at the post-conviction hearing regarding his borrowing money from her shortly after the robbery. We note that the defense theory was that the Petitioner's stabbing the victim was accidental, not that the Petitioner was not present during the altercation or that he did not stab the victim. Any potential testimony from the Petitioner's mother that the Petitioner was not the person who robbed and stabbed the victim would have been inconsistent with the defense theory and the testimony of the girlfriend, who was scheduled to testify for the State before the Petitioner decided to plead guilty. We also note that the Petitioner did not present his mother's testimony at the post-conviction hearing. Generally, presenting a witness at the post-conviction hearing "is the only way the petitioner can establish that the failure to . . . call the witness . . . resulted in the denial of critical evidence which inured to the prejudice of the petitioner." *Black v. State*, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990).

Relative to counsel's failure to obtain an investigator and a forensic expert, the record reflects that the drug deal, the physical altercation, and the stabbing occurred inside a car. Counsel determined based upon these facts that employing an investigator or a forensic expert relative to blood spatter would not have revealed how the victim was stabbed during the altercation. We note that the Defendant claimed the stabbing was accidental and that the defense theory focused on the Petitioner's mental culpability, not the identity of the perpetrator. Also, counsel testified that the Petitioner did not request an investigator or a forensic expert, although they discussed counsel's determination that the witnesses were not needed because of the facts of the case, where the incident occurred, and the chosen defense. We note that counsel was familiar with the process for obtaining funds to hire an investigator and an expert witness. Likewise, counsel denied telling the Petitioner that the Petitioner would have to pay for an investigator and an expert and that the trial court would deny a request for funds. Furthermore, the Petitioner presented neither an expert witness nor an investigator at the post-conviction hearing. *See Black*, 794 S.W.2d at 757.

Relative to the Petitioner's appeal following the bond revocation hearing, the Petitioner argues that counsel failed to file a timely appeal regarding the bond conditions pursuant to the proper rule of appellate procedure. The record reflects that on appeal the Petitioner argued that the bond revocation was improper and created a manifest injustice for which his guilty plea should be withdrawn. *See Melvin J. Branham*, 2014 WL 869552, at \*4. This court concluded that revocation of the Petitioner's bond was "based upon the imposition of certain conditions," including violating a prohibition against using drugs, was not appealable pursuant to Tennessee Rule of Appellate Procedure 3. *Id.* at \*6. Likewise, this court noted that the proper procedure for appellate review of a trial court's revoking a defendant's bond was to file a motion for review with this court pursuant to Rule 8. *Id.* Counsel's failure to appeal the bond revocation in compliance with Rule 8 was deficient performance. This court, however, considered the Petitioner's issue – whether the bond revocation created a manifest injustice for which withdrawal of the guilty plea was warranted – on the merits. *Id.* This court determined that the Petitioner's drug use "violated the terms of his bond rather than the terms of his plea agreement," that any error relative to the bond conditions would not have entitled the Petitioner to withdraw his guilty plea, and that the Petitioner had failed to show the thirty days was a material component of the plea agreement. *Id.* As a result, the Petitioner has failed to establish he was prejudiced by counsel's appealing the bond revocation pursuant to an erroneous rule of appellate procedure. We note that this court also determined that the Petitioner voluntarily pleaded guilty and that the Petitioner understood the consequences of his pleading guilty. *Id.* at \*7. The post-conviction court properly determined that this court addressed the Petitioner's issues on the merits and that counsel did not provide ineffective assistance. The Petitioner is not entitled to relief.

Based upon the foregoing and the record as a whole, the judgment of the post-conviction court is affirmed.

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ROBERT H. MONTGOMERY, JR., JUDGE