

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 17, 2016

**STATE OF TENNESSEE v. THOMAS NEAL McCLEAN**

**Appeal from the Criminal Court for Knox County**  
**No. 103942 Steven Wayne Sword, Judge**

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**No. E2015-01957-CCA-R3-CD – Filed March 31, 2016**

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The Defendant, Thomas Neal McClean, was convicted upon his guilty pleas to robbery, a Class C felony; burglary, a Class E felony; and theft of property valued at \$500 or less, a Class A misdemeanor. *See* T.C.A. §§ 39-13-401 (2014) (robbery), 39-14-402 (2014) (burglary), 39-14-103 (2014) (theft), 39-14-105(a)(1) (2014) (grading of theft). He received an effective ten-year sentence as a Range III, persistent offender. In this appeal, he contends he received the ineffective assistance of counsel. Because his appeal is not upon any basis permitted by Tennessee Rule of Appellate Procedure 3(b), we dismiss the appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed**

ROBERT H. MONTGOMERY, JR., delivered the opinion of the Court, in which THOMAS T. WOODALL, P.J., and ROBERT W. WEDEMEYER, J., joined.

J. Lidell Kirk (on appeal), and Sarah Olesiuk Parker (at guilty plea hearing), Knoxville, Tennessee, for the Appellant, Thomas Neal McClean.

Herbert H. Slatery III, Attorney General and Reporter; Lacy Wilber, Senior Counsel; Charne Allen, District Attorney General; and Philip Morton, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

After he pleaded guilty and the judgments were filed in the trial court, the Defendant filed a pro se notice of appeal in which he stated ineffective assistance of counsel as his sole basis for relief. The attorney who represented the Defendant at the guilty plea hearing was unaware of the pro se notice of appeal but moved to withdraw after learning of it, and appellate counsel was appointed.

In the brief filed by the Defendant's appellate counsel, counsel makes no argument as to the merits of the ineffective assistance of counsel issue the Defendant raised in the pro se notice of appeal, nor has counsel raised any allegations of error in the conviction proceedings. Counsel acknowledges that the bases for an appeal from a guilty plea are limited by Tennessee Rule of Appellate Procedure 3(b), which states, in pertinent part:

In criminal actions an appeal as of right lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals . . . on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had.

Counsel acknowledges that the appropriate method by which to raise an ineffective assistance of counsel claim is through a petition for post-conviction relief following the conclusion of the appellate process relative to the convictions. Counsel also acknowledges that the Defendant did not reserve a certified question of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2)(A) or (D). The State contends that because no justiciable issue has been presented, the appeal should be dismissed.

Upon review of the record, we note that the Defendant did not reserve a certified question of law, that he does not seek review of a sentence that was not part of the plea agreement, and that he has not raised an issue which was not waived as a matter of law by the guilty plea. We note that the appropriate procedure by which to litigate an ineffective assistance of counsel claim is prescribed by the Post-Conviction Procedure Act. *See* T.C.A. §§ 40-30-101 to -122 (2012 and Supp. 2015). Because the Defendant has not presented an issue that is reviewable pursuant to Tennessee Rule of Appellate Procedure 3(b), the appeal must be dismissed.

In consideration of the foregoing and the record as a whole, the appeal is dismissed.

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ROBERT H. MONTGOMERY, JR., JUDGE