IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

OCTOBER 1995 SESSION

January 12, 1996

Cecil Crowson, Jr. Appellate Court Clerk

DEXEL LYNN PARTON,

Appellant,

v.

STATE OF TENNESSEE, Appellee. No. 03C01-9406-CR-00242 Knox County Hon. Richard Baumgartner, Judge (Post-Conviction)

CONCURRING OPINION

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I concur in the majority opinion's result and most of its reasoning. However, I disagree with its view of the relationship between the forgery law and criminal attempt. The forgery statute in question provides that any person who "fraudulently passes or transfers, or offers to pass or transfer, any forged paper, knowing it to be forged, with intent to defraud another" commits a felony. T.C.A. § 39-3-804 (1982) (repealed 1989). In context, the reference to an offer carries special meaning that does not include every means by which an attempt may occur. I believe it was included for the direct purpose of making equally culpable the type of person who, for example, presents a forged check to a bank teller for cashing, but the teller notices the forgery and thereby refuses to accept the check or to cash it. In this sense, an "offer" carries a distinct legal meaning that is significantly narrower than that contemplated by the attempt statute at issue. Thus, I disagree with the necessary implication in the majority opinion that the term "offer" encompasses all "attempts" at transfers that happen to be unsuccessful. A criminal attempt to pass or transfer a forged instrument could exist without any offer being made. However, I still do not believe that the petitioner can prevail. The title given to the offense in question that exists on the presentment, itself, is "ATTEMPTED TRANSFER OF FORGED INSTRUMENT." The allegations in the first count of the presentment specifically charge that the petitioner made an "offer to pass or transfer" a forged check to a bank. In the petitioner's written guilty plea, the reference to "Attempt to Transfer a Forged Instrument" also relates it to the offense charged in the presentment at issue. Moreover, the trial court's statement to the petitioner about the "attempted transfer of a forged instrument" also related it to being charged in the first count of the presentment and noted that his agreement involved a ten-year sentence, a sentence available under the forgery statute, but not the attempt statute.

Thus, although the "attempt" misnomer occurred, it was consistently in reference to the offense actually charged in the first count of the relevant presentment. Unquestionably, the petitioner was legally convicted under the forgery statute as it was alleged in the presentment. Unquestionably, the petitioner was fully aware of the charge he was facing and to which he pled guilty. No further analysis is needed.

Joseph M. Tipton, Judge