

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER 1996 SESSION

<p><b>FILED</b></p> <p>October 17, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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<p><b>THOMAS HEBRON,</b>  Appellant,  V.  <b>STATE OF TENNESSEE,</b>  Appellee.</p>	<p>) ) C.C.A. No. 01C01-9512-CC-00416 ) ) Hickman County ) ) Honorable Donald P. Harris, Judge ) ) (Rule 9 - Interlocutory) ) )</p>
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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**PAUL G. SUMMERS,**  
Judge

**OPINION**

The appellant was convicted of first degree murder. He was sentenced to life imprisonment. The Tennessee Supreme Court denied permission to appeal in 1986. In 1987, the appellant was denied habeas corpus relief. In 1989, the appellant filed his first petition for post-conviction relief. The petition was dismissed. In 1994, he filed a Petition for Habeas Corpus and/or Post-Conviction Relief. His second petition was summarily dismissed. In 1995, the appellant filed a Motion to Reopen First Post-Conviction Relief. The motion was dismissed and the appellant appeals.

The appellant argues that his original jury instruction was constitutionally infirm.<sup>1</sup> He maintains the instruction violated due process by requiring a lower burden of proof than that constitutionally mandated. He further argues that his constitutional challenge was not cognizable prior to Rickman v. Dutton, 864 F.Supp. 686 (M.D. Tenn. 1994) and, therefore, should not be procedurally barred.

The trial judge dismissed the appellant's request for relief "for failure to state grounds on which relief can be granted." Upon review, we find no error of law mandating reversal. See Carter v. State, No. 03C01-9506-CC-00179 (Tenn. Crim. App. July 15, 1996) (holding instruction constitutional). The trial court's dismissal is affirmed in accordance with Tenn. R. Ct. Crim. App., Rule 20.

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<sup>1</sup>The appellant challenges the following excerpt from his jury instruction:

. . . Reasonable doubt is that doubt engendered by an investigation of all of the proof in the case, and an inability after such investigation to let the mind rest easily as to the certainty of guilt. Reasonable doubt does not mean a (sic) captious, possible or imaginary doubt. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge; but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense.

PAUL G. SUMMERS, Judge

CONCUR:

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GARY R. WADE, Judge

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L. T. LAFFERTY, Special Judge