

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JUNE 1996 SESSION

FILED
October 10, 1996
Cecil W. Crowson
Appellate Court Clerk

DOWELL LEWIS SHANNON,)
)
Appellant)
)
V.)
)
STATE OF TENNESSEE)
)
Appellee)

NO. 01C01-9510-CR-00345
WILSON COUNTY
HON. JAMES O. BOND, JUDGE
(Post-Conviction)

FOR THE APPELLANT

Comer L. Donnell
District Public Defender
213 North Cumberland Street
Post Office Box 888
Lebanon, Tennessee 37087

FOR THE APPELLEE

Charles W. Burson
Attorney General and Reporter
450 James Robertson Parkway
Nashville, Tennessee 37243-0493

William D. Bridges
Assistant Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37243-0493

Tom P. Thompson, Jr.
District Attorney General
203 Greentop Street
P.O. Box 178
Hartsville, 37074

H. Douglas Hall
Assistant District Attorney General
111 Cherry Street
Lebanon, Tennessee 37087

OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

OPINION

This is an appeal as of right from the Wilson County Criminal Court's dismissal without a hearing of Appellant's post-conviction relief petition. Appellant claims that he was denied the effective assistance of counsel in violation of both the United States Constitution and the Tennessee Constitution. We find that there is no merit to Appellant's claim and accordingly affirm the trial court's dismissal of Appellant's petition.

On June 30, 1991, Appellant shot Jerry Cowan in the chest with a handgun. Mr. Cowan did not die immediately after the gunshot, but died later on his way to, or at the hospital. On July 16, 1992, Appellant was found guilty of first degree murder and was later sentenced to life imprisonment. On August 2, 1995, after having exhausted all other appeals, Appellant filed a petition for post-conviction relief. The petition alleged that Appellant's constitutional right to the effective assistance of counsel was violated when his trial counsel stipulated to the State's autopsy report. Following the judge's preliminary consideration of the record, the petition was dismissed because it failed to show that petitioner was entitled to the relief sought.

Appellant claims that the trial judge erroneously dismissed his post-conviction petition. This argument is without merit.

Tennessee's new and revised Post-Conviction Procedure Act became effective in May, 1995. This act provides that when a trial judge receives a post-conviction petition, he or she shall "examine it together with all the files, records, transcripts, and correspondence relating to the judgment under attack, and enter an order in accordance with the provisions of this section or § 40-30-207." Tenn. Code Ann. § 40-30-206(a) (Supp. 1995). Subsection (d) further provides:

The petition must contain a clear and specific statement of all grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant

further proceedings. Failure to state a factual basis for the grounds alleged shall result in immediate dismissal of the petition.

Tenn. Code Ann. § 40-30-206(d) (Supp. 1995).

Here, the Appellant alleges that his petition was sufficient to meet the clear and specific statement criteria of the Act. We agree. Appellant marginally stated a factual basis for his petition's claim by alleging that his constitutional right to the effective assistance of counsel was violated when his trial counsel stipulated to the state's autopsy report.

However, when a trial court has received a petition in proper form, it "shall examine the allegations of fact in the petition. If the facts alleged, taken as true, fail to show that the petitioner is entitled to relief . . . , the petition shall be dismissed." Tenn. Code Ann. § 40-30-206(f) (Supp. 1995). In this case, the inquiry is whether the Petitioner would be entitled to relief even if his attorney was deficient in agreeing to stipulate to the autopsy report.

In reviewing an ineffective assistance of counsel claim, this Court must determine whether the advice given or services rendered by the attorney are within the range of competency demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). To prevail on a claim of ineffective counsel, a petitioner "must show that counsel's representation fell below an objective standard of reasonableness" and that this performance prejudiced the defense. There must be a reasonable probability that but for counsel's error the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 692, 694, 104 S.Ct. 2053, 2064, 2067-68, 80 L.Ed. 674 (1984); Best v. State, 708 S.W.2d 421, 422 (Tenn. Crim. App. 1985).

Assuming arguendo, that the Appellant's representation was deficient, we would still have to inquire whether the representation prejudiced the outcome of the case. We find that the Appellant's claim does not meet the second prong of the

Strickland test. Apparently, the Appellant claims that if his trial counsel had required the medical examiner's testimony at trial rather than stipulating to the autopsy report, the medical examiner's testimony would have shown that the immediate cause of death was the victim's loss of blood before receiving medical attention -- not the fact that Appellant shot the victim. This contention is patently absurd. But for the Appellant shooting the victim, there would have been no loss of blood or death.

Accordingly, the trial court's denial of the post-conviction relief petition is affirmed.

WILLIAM M. BARKER, JUDGE

CONCUR BY:

JOHN H. PEAY, JUDGE

DAVID G. HAYES, JUDGE