

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MARCH 1997 SESSION

**FILED**

May 7, 1997

Cecil W. Crowson  
Appellate Court Clerk

WILLIAM ROBERT CANTRELL, )  
 )  
Appellant, )  
 )  
VS. )  
 )  
STATE OF TENNESSEE, )  
 )  
Appellee. )

NO. 01C01-9605-CC-00224

RUTHERFORD COUNTY

HON. JAMES K. CLAYTON, JR.,  
JUDGE

(Post-Conviction)

**FOR THE APPELLANT:**

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**FOR THE APPELLEE:**

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**JOE G. RILEY,**  
**JUDGE**

## OPINION

The appellant, William Robert Cantrell, appeals the dismissal of his petition for post-conviction relief filed in the Circuit Court of Rutherford County. Cantrell is presently serving an effective sentence of fifteen (15) years following his guilty pleas in 1990 to the offenses of aggravated kidnapping, aggravated rape and robbery with a deadly weapon. In his post-conviction petition he seeks to set aside the guilty pleas based upon ineffective assistance of counsel. After a hearing, the trial court dismissed the petition. We affirm the judgment of the trial court.

### I

In 1990, Cantrell entered pleas of guilty to aggravated kidnapping, aggravated rape and robbery with a deadly weapon. The trial court sentenced him to fifteen (15) years each for the offenses of aggravated kidnapping and aggravated rape and eight (8) years for robbery with a deadly weapon. The sentences were ordered to run concurrently. No appeal as of right was taken from the judgments of conviction.

Thereafter, Cantrell filed a petition for post-conviction relief. A hearing was held on the petition on June 24, 1991. The trial court took the matter under advisement and subsequently denied post-conviction relief. No appeal was taken from the trial court's dismissal of the petition at that time.

In March 1994, Cantrell filed a second petition for post-conviction relief. In this petition, he sought a delayed appeal from the trial court's dismissal of his first petition for post-conviction relief. The trial court denied the second petition and this Court affirmed that decision. William Robert Cantrell v. State, C.C.A. No. 01C01-9408-CC-00289 (Tenn. Crim. App. filed June 29, 1995, at Nashville).

Cantrell then filed for permission to appeal to the Tennessee Supreme Court. On October 30, 1995, the Supreme Court entered an order granting the application for permission to appeal,

. . . for the limited purpose of remanding the case to the trial court for an evidentiary hearing on the issue of whether petitioner was denied a first tier appeal of his original post-conviction petition as a result of inaction on the part of a state agency.

If the trial court finds that an appeal was denied, an appeal shall be granted. In the alternative, the court may grant a new hearing on the post-conviction, from which petitioner shall be entitled to a first tier appeal.

On remand, the trial court granted Cantrell a delayed appeal on the denial of his original petition for post-conviction relief. Pursuant to this order, Cantrell now appeals.

On appeal, Cantrell alleges ineffective assistance of counsel when he entered pleas of guilty to the offenses of aggravated kidnapping, aggravated rape and robbery with a deadly weapon. He claims that trial counsel asked him to sign the plea agreement without reading it to him or explaining it to him. He asserts that he cannot read and could not have understood the implications of the plea agreement. He further argues that trial counsel misled him into believing that he would receive a total sentence of five years if he pled guilty. Additionally, he claims that trial counsel instructed him to say “yes” to whatever questions the trial judge asked him during the guilty plea proceedings. Therefore, Cantrell argues that his guilty pleas were not knowingly and voluntarily given.

## II

Initially, we must note that the record is indeed sparse. The original post-conviction petition is not included in the record, nor is the order denying the petition. At the post-conviction hearing, the trial judge ordered that a transcript of the guilty plea proceedings be prepared, but that transcript is also absent from the record before us.

It is the duty of the appellant to prepare an adequate record for appellate review. T.R.A.P. 24. In State v. Ballard, 855 S.W.2d 557 (Tenn. 1993), the Supreme Court stated that:

When a party seeks appellate review[,] there is a duty to prepare a record which conveys a fair, accurate and complete

account of what transpired with respect to the issues forming the basis of the appeal. State v. Bunch, 646 S.W.2d 158, 160 (Tenn.1983). Where the record is incomplete and does not contain a transcript of the proceedings relevant to an issue presented for review, or portions of the record upon which the party relies, an appellate court is precluded from considering the issue. State v. Roberts, 755 S.W.2d 833, 836 (Tenn.Cr[im].App.1988). Absent the necessary relevant material in the record an appellate court cannot consider the merits of an issue. See T.R.A.P. 24(b).

Id. at 560-61; see *a/so* State v. Utley, 928 S.W.2d 448, 453 (Tenn. Crim. App. 1995); State v. Carey, 914 S.W.2d 93, 97 (Tenn. Crim. App. 1995).

In the absence of an adequate record on appeal, this Court must presume that the trial court's rulings are supported by sufficient evidence. State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991). Because the record is incomplete, our Court presumes that the trial court's dismissal of Cantrell's post-conviction petition was correct. State v. Smith, 891 S.W.2d 922, 932 (Tenn. Crim. App. 1994).

### III

Looking at the transcript of the post-conviction hearing, which is the only actual evidence in the record, Cantrell's argument has no merit. The test in Tennessee in determining whether counsel provided effective assistance at trial is whether the performance was within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), provides a two-prong analysis when a petitioner claims ineffective assistance of counsel. The petitioner has the burden to prove that (1) the attorney's performance was deficient, and (2) the deficient performance resulted in prejudice to the defendant so as to deprive him of a fair trial. Id. at 687, 104 S.Ct. at 2064. In order to prove prejudice in the context of a guilty plea, the petitioner must demonstrate "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985); see Bailey v. State, 924 S.W.2d 918, 919 (Tenn. Crim. App. 1995); Wade v. State, 914 S.W.2d 97, 101

(Tenn. Crim. App. 1995).

In the present case, Cantrell has not demonstrated prejudice. Although he cannot read, Cantrell testified at the post-conviction hearing that he could read the “15 years” on the plea agreement that he signed. He remembered hearing the trial judge tell him that he would be receiving a sentence of fifteen years. Additionally, he admitted that he previously pled guilty to other offenses on at least five occasions. Therefore, he was aware of the questions that would be asked during the proceedings and the implications of entering a plea of guilty.

#### IV

In a post-conviction proceeding, the burden is on the petitioner to prove by a preponderance of the evidence the allegations in the petition. Davis v. State, 912 S.W.2d 689, 697 (Tenn. 1995). The evidence at the post-conviction hearing does not preponderate against the trial judge’s finding that Cantrell was not entitled to relief. Furthermore, he did not provide this Court with an adequate record to conduct a meaningful review of the trial court’s dismissal of the petition. Accordingly, the judgment of the trial court is affirmed.

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**JOE G. RILEY, JUDGE**

**CONCUR:**

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**JOSEPH M. TIPTON, JUDGE**

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**THOMAS T. WOODALL, JUDGE**