



07/13/94 ULYSSES RICHARDSON v. STATE TENNESSEE

1994 | Cited 0 times | Court of Criminal Appeals of Tennessee | July 13, 1994

The appellant was convicted of two counts of murder in the first degree, for which he received consecutive life sentences, each of which was enhanced by an additional five years because a firearm was employed in the commission of the offenses. On appeal to this Court his conviction was affirmed. *State of Tennessee v. Ulysses Richardson*, Tennessee Criminal Appeals, opinion filed at Jackson, May 15, 1985. His application for permission to appeal was denied by our Supreme Court on September 9, 1985. On June 27, 1989, the appellant filed his petition for post-conviction relief. After amendment of the petition, the state filed its response, a hearing was held, the trial Judge took the matter under advisement and subsequently the Judge filed extensive findings of fact and Conclusions of law and a judgment denying post-conviction relief. From that denial the appellant has appealed, contending that the trial Judge erred in two particulars in his findings. First he contends that he erred by finding the petition is barred by the statute of limitations. He also contends that the Judge erred by finding that he received effective assistance of counsel.

As to the statute of limitations, the state concedes that the appellant is correct. The trial Judge erred by finding the petition was barred. The statute of limitations provision to the post-conviction relief statutes was added by Chapter 634, Public Acts of 1986. By its terms the statute was effective July 1, 1986. This Court subsequently held that as to petitions that would have been "summarily cut off" by the statute, the three year period ran from July 1, 1986. *Abston v. State*, 749 S.W.2d 487, 488 (Tenn.Crim.App. 1988). The appellant's petition having been filed on June 27, 1989 was within that three year period and was, therefore, timely.

As to the alleged ineffectiveness of his counsel, the appellant contends that his attorney, Brett B. Stein, should have recommended that he accept a plea bargain instead of recommending that he go to trial. However, Mr. Stein testified that the appellant insisted he was innocent and that he could establish an alibi. Thus, the appellant adamantly refused to even consider pleading guilty.

The appellant also complains that Mr. Stein did not review defense strategies with him. At the post-conviction relief hearing he testified that he believed he could have presented a jury question as to whether the killing was murder in the second degree or voluntary manslaughter rather than murder in the first degree, since the victims were his wife and her paramour. As previously noted, the appellant insisted upon the defense of alibi. It would have been difficult indeed to present alibi as a defense theory and the alternative theory that the shooting was a lesser degree of homicide, since the appellant insisted he was not there and did not kill the victims.

The appellant also contends that Mr. Stein did not adequately investigate the case and should have



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called Maxine Williams as a witness. Mr. Stein testified that he interviewed all of the eyewitnesses and conducted a thorough investigation. Since the appellant never mentioned Ms. Williams to him and her name did not surface during the investigation, there was no way he could have known that she needed to be interviewed.

The appellant testified that he wanted to testify at trial, but that his counsel wrongly advised him not to do so. Mr. Stein testified that he advised his client not to testify because his testimony would have undermined his defense of alibi. Had he testified the state would have presented evidence that he had been at his wife's home a few days before the shooting and a complaint had been lodged with the police at that time about his presence.

The appellant contends that his counsel should have requested a mental evaluation because he does not now believe he was competent to assist his attorney during the trial. However, Mr. Stein noticed nothing about his behavior that would indicate the necessity for a mental evaluation. Where a defendant does not act differently from a "normal person" and appears to be in complete control of his actions, there is no valid reason to request a mental examination. An attorney's performance is not deficient because he failed to request a mental evaluation in such circumstances. *State v. Kerley*, 820 S.W.2d 753, 755 (Tenn.Crim.App. 1991).

The trial Judge heard the testimony of the appellant and his counsel. As was his prerogative, he chose to believe Mr. Stein rather than the appellant and to find that counsel's performance was within "the range of competence demanded of attorneys in criminal cases." *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). His findings have the weight of a jury verdict and will not be set aside unless the evidence preponderates against those findings. *Clenny v. State*, 576 S.W.2d 12, 14 (Tenn.Crim.App. 1978). The evidence clearly does not preponderate against the Judge's findings. This issue has no merit.

The judgment is affirmed.

JERRY SCOTT, PRESIDING JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

LYNN W. BROWN, SPECIAL JUDGE

