



11/07/86 CAROL LEMING v. STATE TENNESSEE

1986 | Cited 0 times | Court of Criminal Appeals of Tennessee | November 7, 1986

JERRY SCOTT, JUDGE

Pursuant to his pleas of guilty, the appellant was convicted of two counts of aggravated rape and received concurrent sentences of forty years in the state penitentiary as a Range I, standard offender. Shortly after he arrived at the penitentiary, the appellant filed his petition for post-conviction relief, alleging that he received ineffective assistance of counsel. Therefore, he says that his plea was not knowingly and voluntarily entered.

The appellant contends that his counsel was ineffective because he was advised to plead guilty without raising insanity as a defense. He further contends that his counsel failed to investigate the character of the two eleven year old female victims. He contends that his counsel was ineffective because he would not attempt to withdraw the guilty plea and because he did not pursue post-conviction remedies.

The transcript of the guilty plea hearing reveals that the trial court complied with Rule 11(c), T.R.Cr.P. and State v. Mackey, 553 S.W.2d 337, 341 (Tenn. 1977). When asked why he was pleading guilty, the appellant specifically said, "Cause I'm guilty." The transcript further reveals that the appellant understood the nature of the charges against him and also, when asked by the court, told the Judge what the range of punishment was for the offenses. The trial Judge explained his right to plead not guilty and to have a jury trial with counsel representing him. He explained in some detail how a jury trial is conducted, including the right of confrontation and the right not to testify. The trial Judge determined that there were no threats or promises made to extract the plea of guilty and that it was knowingly and voluntarily entered. The trial court's findings are conclusive unless the evidence preponderates against them. State v. Foulks, 653 S.W.2d 430 (Tenn.Cr.App. 1983). There was ample evidence to support the court's finding that the guilty plea was knowingly and voluntarily entered, including the appellant's repeated admissions of guilt.

At the guilty plea proceeding, the appellant was represented by three attorneys, Jon Seaborg, William Carter and James Paris. However, Messrs. Carter and Paris represented him only on another matter being heard at that time. Nevertheless, the record reveals and the trial Judge specifically remembered that all three counsel were with him at the time of his pleas.

At the sentencing hearing the appellant stated that he was not guilty, but that he was pleading guilty to "keep from going through this."



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At the hearing on the post-conviction relief petition the appellant and his former wife testified, as did Mr. Seaborg. The appellant testified that counsel conferred with him three times for five minutes or less each time and that Mr. Seaborg told him to plead guilty without even investigating the possibility of presenting an insanity defense. Mr. Seaborg testified that their meetings were much more lengthy and that, although there was no indication that he was incompetent or unable to understand the nature of the proceedings. At the court's direction at the post-conviction proceeding, he was examined by a psychologist and his report confirms that he was competent. Mr. Seaborg and the appellant agreed that it was the appellant who suggested that he should plead guilty to avoid putting the victims, who were his nieces, through the additional trauma of a trial.

At the post-conviction hearing the appellant repeatedly admitted vaginal intercourse with one child and that the other performed fellatio on him. However, the appellant has, from the time of his earliest contact with his counsel, maintained that he was not guilty of aggravated rape because each of the youthful victims consented. In fact, it was his position that one of the children was the aggressor and that she lured him into having sexual intercourse with him. He contended that the other child performed fellatio on him as he was driving a car and that her action was also entirely voluntary.

The appellant contended that his counsel failed to investigate the character of the two victims. Since the character of victims so young is irrelevant, his defense counsel, who had conducted some investigation of their prior behavior, decided not to launch such an attack upon them. Mr. Seaborg wisely felt that such tactics would only anger the court.

Finally, the appellant contends that his counsel was defective because he failed to pursue post-conviction remedies. As his counsel advised him, the only possible grounds for post-conviction relief are those set forth in this petition, ineffective assistance of counsel. Obviously, counsel cannot be expected to assert his own incompetence at a post-conviction proceeding.

The record reveals beyond any question that the advice given and the services rendered by the appellant's counsel were within the range of competence demanded of attorneys in criminal cases. *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). Assisted by competent counsel, the appellant knowingly and voluntarily admitted his guilt. As the trial Judge found, there is absolutely no basis for the granting of post-conviction relief.

