

IN THE TWELFTH JUDICIAL DISTRICT OF TENNESSEE
CIRCUIT COURT OF GRUNDY COUNTY

ADAM C. BRASEEL,)	
Petitioner)	
)	
vs.)	No: 4221
)	
STATE OF TENNESSEE,)	
Respondent)	

ORDER GRANTING PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

This matter came on to be heard by the undersigned Circuit Court Judge, Justin C. Angel, on November 17, 2015, in the courtroom at Altamont upon the Amended Petition for Relief from Conviction or Sentence, the State’s Answer to Petition for Post-Conviction Relief, the testimony of the witnesses, the arguments of counsel, the exhibits placed into the record, and the record as a whole. From all of which it appeared to the Court as follows:

BACKGROUND

The Petitioner / Defendant was convicted of first degree premeditated murder, first degree felony murder, especially aggravated robbery, attempt to commit first degree murder, aggravated assault, and assault on November 7, 2007, after a jury trial, presided over by then, Circuit Court Judge, Buddy D. Perry. The trial court merged the Defendant’s convictions for first degree premeditated murder and first degree felony murder, and sentenced him to life imprisonment for his murder conviction. The trial court also sentenced the Defendant to fifteen years for each class A felony conviction, three years for his class C felony conviction, and eleven months and twenty-nine days for his class A misdemeanor conviction. The trial court ordered the Defendant to serve his sentences concurrently, for an effective life sentence with the

possibility of parole. The Petitioner was twenty-four (24) years of age at the time of trial. The Petitioner was represented at trial by Floyd Davis and Robert Peters, attorneys from Franklin County. The Amended Post-Conviction Petition raises several issues primarily based in the Petitioner's claim that he received ineffective assistance of counsel at the jury trial. At the post-conviction hearing, the Petitioner was represented by attorney, Douglas Trant, Petitioner, who argued the following deficiencies should void his sentence:

- 1) His attorneys failed to move to suppress the single photo lineup, presented to Kirk Braden, alleged eye witness and victim who testified at trial.
- 2) His attorneys failed to notice the misidentification of the Petitioner at trial by Rebecca Hill, alleged eye witness and victim who testified at trial but is now deceased.
- 3) His attorneys failed to argue to the trial jury that Rebecca Hill, soon after the crimes, could not identify the Petitioner in a photo lineup.
- 4) His attorneys failed to request, and the trial court failed to charge, the trial jury of T.P.I. 42.05 Identity.

Additionally, Petitioner alleges in his Petition that:

- 1) The trial proceeding was flawed,
- 2) There is absolutely no evidence relating the Petitioner to the crimes, except for the identification, of Rebecca Hill and Kirk Braden, of which was flawed as aforementioned.
- 3) Trial counsels' failure to object to the single photo lineup and the failure to move to suppress said lineup, constituted a waiver thereof, thus not allowing the appellate court to consider said issues.

THE LAW

Relief under this part shall be granted when the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States. **T.C.A. § 40-30-103.**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

6th Amendment, U.S. Constitution.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

14th Amendment, U.S. Constitution.

That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial

jury of the County in which the crime shall have been committed, and shall not be compelled to give evidence against himself. **Tennessee Constitution, Article 1, § 9.**

In order to grant post-conviction relief based on ineffective assistance of counsel, the Petitioner must prove by clear and convincing evidence that his attorney's performance failed to meet the reasonable standard of practice for attorneys and that this failure raised a reasonable probability that his conviction would have been different but for counsel's deficient performance. [See T.C.A. § 40-30-110(f) and *Strickland v. Washington*, 466 U.S. 668 (1984)]

Clear and convincing evidence is a different and higher standard than preponderance of the evidence. To be clear and convincing evidence the evidence must clearly show there is no serious or substantial doubt about the conclusions to be drawn therefrom. *Hicks v. State*, 983 S.W. 2d 240 at 245 (Tenn. Crim. App. 1998), *In Re: Valentine*, 79 S.W. 3d 539 at 546 (Tenn. 2002).

CONCLUSIONS

This Court has carefully considered all of Petitioner's alleged errors, in light of the testimony given at the post-conviction hearing and in light of the Petitioner's burden to prove by clear and convincing evidence all factual allegations necessary to establish a violation of a constitutionally guaranteed right. The Petitioner's allegation that he did not receive effective assistance of counsel at the jury trial was supported by clear and convincing evidence at the post-conviction hearing.

The court finds that there was no other evidence relating the Petitioner to the crimes except the identification by Rebecca Hill and Kirk Braden. Therefore, the court places great emphasis on the credibility and sufficiency of the identifications testified to at trial. Again, no other evidence, DNA or other, links the Petitioner to the crimes. The jury clearly relied on the identification of the Petitioner by Rebecca Hill and Kirk Braden.

It was testified to at trial that Rebecca Hill failed to identify the Petitioner in a photo lineup immediately after the crimes. It was only at a later time did Ms. Hill identify the Petitioner. At trial, Ms. Hill improperly identified the Petitioner on a lineup, actually identifying someone else. This misidentification was not noticed or argued to the trial jury by trial counsel. Trial counsel did not seek to suppress Ms. Hill's identification of the Petitioner. Ms. Hill is now deceased.

Kirk Braden was shown a single photo lineup of the Petitioner by former Grundy County Sheriff, Brent Myers. Single photo lineups have consistently been held to be unconstitutional by our appellate courts. Mr. Braden obviously identified the Petitioner. Trial counsel failed to move to suppress the single photo lineup or object to it as well.

Trial counsel also failed to request that the trial judge charge the jury on identity, found in T.P.I. 42.05. Trial counsels' actions at trial precluded the appellate court to consider the issue of identity due to the waiver said actions constituted.

All of these actions or inactions by trial counsel constitute ineffective assistance of counsel, thus denying the Petitioner his constitutional rights at trial. Again, the court is considering the aforementioned issues of identification with extreme weight, based contextually with the fact that identification alone is all that ties the Petitioner to the crimes. If any other evidence whatsoever existed, then the flaws with the identification of the Petitioner would likely not be as important and fundamental to ensuring that the Petitioner receive a constitutionally fair trial.

Based on the testimony and the law, this Court can conclude there is clear and convincing evidence to support a finding of an abridgement of the Petitioner's rights guaranteed by either the 5th, 6th, or 14th Amendments to the United States Constitution or Article 1, § 9 of the Tennessee Constitution.

Furthermore, the court finds that it does not have the authority to consider the Petitioner's Motion for Exoneration, due to the lack of case law precedent allowing the Tennessee trial court to consider and implement the Supreme Court decision in *MsQuiggins v. Perkins*, 133 S.Ct.

1924 (2014). Therefore, the Petitioner's Motion for Exoneration is denied.

Accordingly, IT IS ORDERED, ADJUDGED AND DECREED:

- 1) The Amended Petition for Relief from Conviction or Sentence is granted.
- 2) The Petitioner's convictions are void.
- 3) The Petitioner is entitled to a new jury trial.
- 4) Costs are assessed to the State.

ENTER: This 25th day of December, 2015.

HON. JUSTIN C. ANGEL
Circuit Court Judge

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