IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 2006 Session

STATE OF TENNESSEE v. RICKY THOMPSON

Direct Appeal from the Circuit Court for McMinn County
Nos. 89-705, -06, -07 Jon Kerry Blackwood, Senior Judge

No. E2005-01790-CCA-R3-DD - Filed April 25, 2007

PART II

Wedemeyer, Robert W., Judge, dissenting.

I am, respectfully, unable to join in the majority's reversal of the Defendant's sentence of death. After conducting the review as mandated by Tennessee Code Annotated section 39-2-205, I conclude that: (1) the evidence supports the jury's finding of the absence of any mitigating circumstances sufficiently substantial to outweigh the aggravating circumstance or circumstances so found; and (2) the sentence of death in this case is proportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant. See T.C.A. § 39-2-205(c)(3) & (4) (1982).

I understand the majority's position to be that, pursuant to our mandatory review, mitigating factors not found by the jury outweigh the aggravating factors, and the sentence of death is disproportionate in this case due to the Defendant's extensive history of mental treatment, the extreme mental or emotional disturbance, the actions of the victim, and the Defendant's lack of a criminal history. See T.C.A. § 39-2-203(j)(1), (2), (3) & (8) (1982).

With regard to mitigating circumstances, I agree with the majority that the record clearly evinces that the Defendant has no significant prior criminal history. I firmly believe, however, that the victim in this case was not a participant in the Defendant's conduct. The majority relies, in part, on the fact that the Defendant was led to believe by another employee that the victim left her place of employment with another man. In my view, this was not participation by the victim, who had no control over what was said to the Defendant by a third party. Further, the victim went to the Defendant's trailer to get her son. The Defendant told the victim not to take the child, which she had every right to do. It is true that an argument ensued, and the victim took her son against the Defendant's wishes and left the trailer. It was thereafter that the Defendant shot the victim's niece and then the victim, while the victim was still holding their child. I fail to see how the victim, by going to the Defendant's trailer and taking her own son, was a participant in the Defendant's conduct. The evidence does not support the application of this aggravating factor, and I give it no weight. See T.C.A. § 39-2-203(j)(3).

The majority relies primarily on the Defendant's voluminous mental history as support for the remaining two mitigating factors that it found applicable: the murder was committed while the

defendant was under the influence of extreme mental or emotional disturbance; and the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected the defendant's judgment. See T.C.A. § 39-2-203(j)(2), (8). While the prospect of losing one's wife or child pursuant to the facts in this case is most certainly a "mental or emotional disturbance," I cannot conclude that is extreme enough to warrant a reprieve from the death penalty, and I do not weigh it as heavily as the majority. Finally, I also disagree with the weight applied to the Defendant's mental history. As such, I would agree with the finding of two separate juries that the aggravating factors outweigh the mitigating factors.

The majority also finds that the death sentence imposed in this case is not proportional to other cases in that, although not legally insane, the Defendant has sufficient mental disease or defect to make his death sentence disproportionate. I note, however, that the death penalty has been upheld in cases involving defendants who introduced mitigating circumstances substantially similar to those presented by the Defendant. State v. Thacker, 164 S.W.3d 208 (Tenn. 2005) (imposing the death penalty upon a finding of aggravating factor (i)(6) and (i)(7) despite mitigating evidence that the defendant suffered from bipolar disorder, personality disorder, and antisocial traits); State v. Terry, 46 S.W.3d 147, 154 & 163-67 (Tenn. 2001) (imposing the death penalty upon a finding of aggravating factor (i)(5) and (i)(6) despite mitigating evidence that the defendant suffered from major depression, characterized as a "serious mental illness"); State v. Pike, 978 S.W.2d 904 (Tenn. 1998) (death penalty imposed on finding of (i)(6) aggravating circumstance, despite no significant prior criminal history and evidence the defendant was mentally disturbed at the time of the murder); State v. Hall, 958 S.W.2d 679 (Tenn. 1997) (upholding a death sentence even though defendant had no prior criminal record and had a personality disorder and severe emotional problems at the time of the murder); State v. Bush, 942 S.W.2d 489 (Tenn. 1997) (imposing death penalty upon finding the (i)(5) and (i)(6) aggravating circumstances, despite substantial evidence of defendant's troubled childhood and mental problems); State v. Hines, 919 S.W.2d 573 (Tenn. 1995) (imposing death penalty upon finding the (i)(2), (i)(5) and (i)(7) aggravating circumstances despite evidence that the defendant had a troubled childhood, was abandoned by his parents, and suffered from self-destructive behavior and personality disorder); State v. Smith, 868 S.W.2d 561 (Tenn. 1993) (imposing death penalty upon finding the (i)(5), (i)(6), (i)(7), and (i)(12) aggravating circumstances despite mitigation evidence that defendant had been hospitalized for depression and paranoid personality disorder).

Therefore, while no two capital cases are identical, when I compare the circumstances of the present case and the present defendant with the circumstances of the cases set out above and those individual defendants, I conclude that this case is not plainly lacking in circumstances consistent with other similar cases where the death penalty has been imposed. Thus, I would conclude that the Defendant's sentence of death is not disproportionate considering the circumstances of the crime and the Defendant. As such, I must respectfully dissent. I would affirm the sentence of death.

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ROBERT W. WEDEMEYER, JUDGE