

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

STATE OF TENNESSEE v. MATRIN BECTON & ANTONIO SYKES

**Criminal Court for Shelby County
No. 98-02267-70**

No. W1999-00581-CCA-R3-CD - Filed June 19, 2002

David G. Hayes, J., separate concurring.

I join with the majority on all issues with the exception of their holding that the hearsay statement of the victim was admissible. The majority finds that the deceased victim's statement "that he was tired of the lifestyle, being in that environment, and he didn't want to be a part of it anymore" was admissible to establish the victim's existing state of mind.

First, I find the victim's statement is not relevant as the statement has no bearing upon any factual issue that was "of consequence to the determination of the action." Tenn. R. Evid. 401. The statement asserts no proof of intent, plan, motive, or mental feeling relevant to the homicide. *See* Tenn. R. Evid. 803(3). Moreover, as the opinion states, "the assault on the victim was a form of punishment for actions taken detrimental to the gang." Clearly, the motive for the murder was disciplinary in nature and had nothing to do with the victim's dissatisfaction with the gang lifestyle. Although I find admission of the hearsay statement error, I find the error harmless. Tenn. R. Crim. P. 52(a).

David G. Hayes, Judge