

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
June 3, 2008 Session

MARCUS WARD v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 04-06910 Paula Skahan, Judge

No. W2007-01632-CCA-R3-PC - Filed January 14, 2009

JOSEPH M. TIPTON, P.J., dissenting.

I respectfully dissent from the majority opinion's holding that lifelong community supervision is not a direct punitive consequence of the petitioner's pleading guilty to aggravated sexual battery. Tennessee expressly makes life supervision a part of the sentence. See T.C.A. § 39-13-524 (providing for "a sentence of community supervision for life"). Thus, I agree with the conclusions reached in New Jersey and Nevada. See State v. Jangochian, 832 A.2d 360, 362 (N.J. Super. App. Div. 2003); Palmer v. State, 59 P.3d 1192, 1196-97 (Nev. 2002). The post-conviction court's factual findings, though, fail to reflect whether the court accredited the petitioner's testimony that he was unaware of this consequence at the time he signed the documents and that he would not have pled guilty had he been told about such a consequence. Thus, I would remand the case for more factual findings based upon the testimony previously received.

JOSEPH M. TIPTON, PRESIDING JUDGE