IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs at Jackson November 12, 2008

RONALD FIELDING v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2001-D-2358   Cheryl Blackburn, Judge

No. M2007-02356-CCA-R3-PC - Filed June 10, 2009

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

I respectfully dissent. I concur with the analysis in the majority opinion, as far as it goes. I am concerned, though, with the trial court's ruling that the Petitioner's claims against trial counsel had been previously determined. I conclude that the record reflects that the Petitioner did not receive a full and fair hearing regarding trial counsel's representation. I believe the case should be remanded to allow such a hearing on that issue.

The record reflects that the Petitioner filed a pro se motion to withdraw his guilty pleas. At the hearing, counsel stated that he had not been sitting at counsel table and that he thought he was present as a witness. The trial court advised the Petitioner that it was going to hear from him and that if the court needed to hear from his trial counsel, counsel would testify. The hearing proceeded with the Petitioner testifying about his various complaints and concerns and the trial court interspersing questions during the testimony. This was followed by cross-examination by the State. The State then had trial counsel testify regarding his actions in representing the Petitioner.

It is obvious from the record that the Petitioner was left to his own devices at the hearing and not afforded the assistance of counsel in pursuing his claims against trial counsel, which the Petitioner believed were relevant to his withdrawing his guilty pleas. The petitioner had not waived the right to counsel, but he was effectively without counsel for the hearing. I do not believe the defendant was provided a "full and fair hearing" as contemplated by the Post-Conviction Procedure Act to bar a claim because of a previous determination.

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JOSEPH M. TIPTON, PRESIDING JUDGE