IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1997 SESSION

FILED

February 13, 1998

Cecil W. Crowson
Appellate Court Clerk

SEAN F. O'BRIEN,	)
	)
	) C.C.A. No. 01C01-9612-CR-00507
Appellant,	)
	) Davidson County
V.	)
	) Honorable Seth Norman, Judge
STATE OF TENNESSEE,	)
	) (Post-Conviction)
Appellee.	)
	)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellant, Sean F. O'Brien, appeals the denial of post-conviction relief. In 1994 he pled guilty to felony murder and received a life sentence, to attempted second degree murder and received a twenty-year sentence, and to especially aggravated robbery and received a forty-year sentence. In March 1995, the appellant filed a pro se petition for post-conviction relief, and in February 1996, the appellant's appointed attorney filed an amended petition. After an evidentiary hearing the court denied the appellant's petition for post-conviction relief. He appeals.

The appellant's sole issue on appeal is whether the hearing court erred in concluding that the appellant's guilty pleas were knowingly and voluntarily entered. The appellant, who has attention deficit disorder, had not received his anti-depressant medication during the time preceding the signing of the guilty plea agreement and the time preceding his sentencing hearing. We affirm.

The appellant and a companion had planned to steal a truck. The appellant, who was twenty years old at the time, armed himself with "a high powered weapon with high powered ammunition." During their attempt to steal a truck, the appellant and his companion came upon two men. They hog-tied them, and the appellant shot both men "execution style in the back of the head." One of the victims managed to call 911. The other victim lived for some time after he was shot, but later died.

The appellant and his companion were arrested and taken to police headquarters, where a videotape was made of the appellant talking to his companion. He told his companion that he would "work on the story that [they could] tell the police." He also described how he had shot the victims and stated that he had to make the shootings look accidental.

The appellant argues that his guilty plea was not knowingly and voluntarily entered because at the time he signed the plea agreement, he had been deprived of his anti-depressant medication for his attention deficit disorder. In his brief, he contends that "[h]e was not able to understand what he was really doing when he entered the guilty plea and could not focus on the details which were necessary to making his decision when he entered his plea." He asserts that he signed the plea agreement on March 11, 1994, which was several days after the sudden termination of his anti-depressant medication and that he entered his guilty plea on April 21, 1994, "again after a cessation of his medication."

The state argues that the appellant's guilty plea was knowingly and voluntarily entered. It contends that the appellant's attorneys returned on March 17, 1994, during which time the appellant, who was taking his medication, signed the plea agreement a second time. Furthermore, the state maintains that the appellant knew that he could withdraw his plea of guilty at any time until he entered his plea in court, yet he entered a plea of guilty before the judge on April 21, 1994.

Because a guilty plea involves the waiver of several of a defendant's constitutional rights, the trial court may not accept a guilty plea without an affirmative showing that the defendant's plea decision was knowing and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969); State v. Mackey, 553 S.W.2d 337 (Tenn. 1977). In post-conviction proceedings, petitioners bear the burden of proving their allegations by clear and convincing evidence. Tenn. Code Ann. § 40-30-210 (Supp. 1996). Furthermore, the trial court's findings of fact in post-conviction hearings are conclusive on appeal unless the evidence preponderates against those findings. Butler v. State, 789 S.W.2d 898, 899 (Tenn. 1990); State v. Buford, 666 S.W.2d 473, 475 (Tenn. Crim. App. 1983);

Clenny v. State, 576 S.W.2d 12, 14 (Tenn. Crim. App. 1978).

The appellant signed the plea agreement the first time apparently when he was not receiving his medication for attention deficit disorder. However, he signed the plea agreement the second time at a time when he was receiving his medication. Based on the record before us, the appellant, who had been receiving medication for almost two years, apparently did not communicate to anyone, not even his attorneys, that he had not received his medication for a period of time before the plea hearing. Therefore, finding that the evidence does not preponderate against the lower court's findings, we affirm.

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PAUL G. SUMMERS, Judge

CONCUR:

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JOSEPH B. JONES, Presiding Judge

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WILLIAM M. BARKER, Judge