

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs December 3, 2019

**DARIN WOODS v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**No. 14-03680 Paula Skahan, Judge**

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**No. W2019-00514-CCA-R3-PC**

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The Petitioner, Darin Woods, appeals from the Shelby County Criminal Court's denial of his petition for post-conviction relief from his convictions for attempted second degree murder, aggravated robbery, attempted aggravated robbery, and employing a firearm during the commission of a dangerous felony, for which he is serving an effective twenty-seven-year sentence. The Petitioner contends that the trial court erred in denying his petition without holding a meaningful hearing. We reverse the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed;  
Case Remanded**

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and J. ROSS DYER, JJ., joined.

Shae Atkinson (on appeal), Memphis, Tennessee, and Rosalind Brown (at hearing), for the appellant, Darin Woods.

Herbert H. Slatery III, Attorney General and Reporter; Katharine K. Decker, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Pam Stark, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

A jury convicted the Petitioner of attempted second degree murder, aggravated robbery, attempted aggravated robbery, and employing a firearm during the commission of a dangerous felony. The Petitioner appealed his convictions, and this court affirmed the judgments of the trial court. *See State v. Darin Woods*, No. W2016-01486-CCA-R3-CD, 2017 WL 2820126, at \*1 (Tenn. Crim. App. June 29, 2017).

**FILED**

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The Petitioner filed a timely pro se petition for post-conviction relief. On June 18, 2018, the post-conviction court appointed post-conviction counsel, and a post-conviction hearing was scheduled for November 15, 2018. At the hearing, the post-conviction court found that the Petitioner waived his post-conviction claims by failing to testify. On January 7, 2019, the court entered an order denying post-conviction relief, finding that the Petitioner had failed to offer facts supporting his claims and had waived any grounds for post-conviction relief. The Petitioner filed a timely notice of appeal.

Post-conviction relief is available “when the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” T.C.A. § 40-30-103 (2012). A petitioner has the burden of proving his factual allegations by clear and convincing evidence. *Id.* § 40-30-110(f) (2012). A post-conviction court’s findings of fact are binding on appeal, and this court must defer to them “unless the evidence in the record preponderates against those findings.” *Henley v. State*, 960 S.W.2d 572, 578 (Tenn. 1997); *see Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). A post-conviction court’s application of law to its factual findings is subject to a de novo standard of review without a presumption of correctness. *Fields*, 40 S.W.3d at 457-58.

The Petitioner contends that the post-conviction court erred in finding that he had waived his post-conviction claims. The Petitioner also argues that his due process rights were violated when the court dismissed his post-conviction petition without holding a meaningful hearing. The State responds that the court properly denied post-conviction relief and that the Petitioner’s due process rights were not violated because he refused to testify at the post-conviction hearing.

At the outset of the Petitioner’s post-conviction hearing on November 15, 2018, the Petitioner’s counsel announced that the Petitioner did not want to proceed that day. The Petitioner said that he “had just got [his] paperwork.” The Petitioner told the court that he was “missing evidence in his discovery packet” and stated that he needed to review the paperwork given to him by post-conviction counsel. Post-conviction counsel told the court that she had given the Petitioner copies of his trial and sentencing transcripts. Counsel said that the Petitioner’s issues had already been raised at trial and on appeal and that she did not “know what else to do.” The Petitioner stated that he wanted the opportunity to retain private counsel. The court instructed the Petitioner that he could either testify regarding his claims or forfeit his right to have a hearing. The Petitioner insisted that he had not been given time to study his case. The Petitioner then requested his “DEA” file. Counsel said she had given the discovery she received from the State to the Petitioner and that she could not proceed without the Petitioner testifying. The court determined that the Petitioner waived his right to post-conviction relief by failing to testify and announced it would enter an order dismissing the petition.

Before dismissing the post-conviction petition, the post-conviction court did not

consider the Petitioner's claims that he was not prepared, that he needed additional discovery materials, and that he wanted an opportunity to hire a lawyer rather than proceed with his court-appointed attorney. The record does not reflect that the court inquired about any communication issues between post-conviction counsel and the Petitioner. Likewise, the court did not question counsel about whether she had provided, or at least investigated, the additional documents sought by the Petitioner. As a result, we remand the case to the post-conviction court for consideration of the Petitioner's request to seek new counsel. *See State v. Buckhart*, 541 S.W.2d 365, 367-68 (Tenn. 1976). Furthermore, we note that the Petitioner's post-conviction counsel has been permitted to withdraw and that appellate counsel was appointed to represent the Petitioner in this court. We remand the case to the post-conviction court for consideration of whether counsel should be appointed or whether the Petitioner should be permitted time to retain private counsel.

Based upon the foregoing and the record as a whole, the judgment of the post-conviction court is reversed and the case is remanded.

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ROBERT H. MONTGOMERY, JR., JUDGE