IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 25, 2006

# AARON LEE SKEEN v. STATE OF TENNESSEE

**Direct Appeal from the Circuit Court for Blount County**
**No. C-15276 D. Kelly Thomas, Jr., Judge**

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**No. E2005-01407-CCA-R3-PC - Filed August 14, 2006**

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Pursuant to a negotiated plea agreement, Petitioner, Aaron Lee Skeen, pled guilty and was convicted of one count of first degree murder, one count of especially aggravated kidnapping, three counts of aggravated rape, four counts of aggravated burglary, and three counts of forgery. The sentences for each conviction were ordered to be served consecutively for an effective sentence of life without parole plus 124 years. He filed a petition for post-conviction relief alleging that he received ineffective assistance of counsel. Following an evidentiary hearing, the trial court denied the petition. On appeal, Petitioner argues that he is entitled to post-conviction relief because trial counsel (1) failed to adequately investigate whether Petitioner was suffering from mental incompetency/diminished capacity at the time he committed the crime, and (2) failed to file a motion to suppress Petitioner's statement to authorities. After a thorough review of the record, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JERRY L. SMITH and JAMES CURWOOD WITT, JR., JJ. joined.

Kevin W. Shepherd, Maryville, Tennessee, for the appellant, Aaron Lee Skeen.

Paul G. Summers, Attorney General and Reporter; Blind Akrawi, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Tammy Harrington, Assistant District Attorney General, for the appellee, the State of Tennessee.

## OPINION

### I. Background

The facts as stipulated at the guilty plea proceeding are as follows:

On May 6, 2003 [Petitioner] did enter the apartment of Sandy Jeffers located in Blount County, Tennessee without her permission and with the intent to commit a felony. When [Petitioner] entered the apartment Ms. Jeffers was sleeping. Skeen proceeded to blindfold Ms. Jeffers with several layers of duct tape over her eyes. He also bound her hands behind her back with duct tape in order to confine her against her will. [Petitioner] also led Sandy Jeffers to believe that he had a weapon, a gun.

After Sandy Jeffers was bound, [Petitioner] raped Sandy Jeffers anally, vaginally and orally. [Petitioner] accomplished these rapes with an article used to le[a]d Sandy Jeffers to believe that [Petitioner] had a weapon. Sandy Jeffers suffered bodily injury as a result of the anal and vaginal rapes. These injuries included anal lacerations and contusions of the uterine cervix. All of the above is based on forensic evidence, autopsy reports, and [Petitioner]'s statement. There is also evidence from the Tennessee Bureau of Investigation that concludes semen samples taken from the body of Sandy Jeffers match the DNA profile from [Petitioner].

After [Petitioner] raped Sandy Jeffers, he then took her, still bound, against her will from her apartment. He also took personal items belonging to Ms. Jeffers at that time. This was determined by witness statements, forensic evidence, and [Petitioner]'s statements. As a result of this kidnapping Sandy Jeffers ultimately suffered serious bodily injury. The proof would also show that [Petitioner] led Sandy Jeffers to believe that he had [a] weapon, a gun.

After kidnapping Sandy Jeffers from her apartment the proof would show that he took her, bound and against her will, to a location in Blount county, Tennessee referred to as Look Rock. Once at this location, [Petitioner] threw Sandy Jeffers over the railing and down a cliff. The body of Sandy Jeffers was located on May 9, 2003 approximately 63 feet down this cliff. According to autopsy results Sandy Jeffers died as a result of numerous injuries sustained during the fall. These injuries included but are not limited to several broken ribs, a fractured spine, broken pelvis, severe brain injuries, a punctured lung, kidney damage, and many contusions. Autopsy results would also show that Sandy Jeffers did not die instantly from these injuries. At the time her body was located, her eyes were still covered with several layers of duct tape and her hands were still bound behind her back.

The physical evidence, forensic evidence, witness statements, medical proof and the statement of [Petitioner] would prove that Sandy Jeffers was killed during the course of a continuous scheme of rape, kidnapping, burglary, and theft. The proof will also established [sic] that Sandy Jeffers was killed in a premeditated manner.

Further investigation revealed that [Petitioner] had been in the apartment of Sandy Jeffers on 3 prior occasions without her knowledge or permission in April and May of 2003. On those 3 occasions [Petitioner] took several personal items belonging to

> Sandy Jeffers, including personal checks. [Petitioner] also forged the signature of Sandy Jeffers with intent to defraud Wal-Mart on her personal checks on three occasions in April and May 2003. The above would be established through forensic evidence, finger print analysis, abundant physical evidence, and [Petitioner's] statement.

**II. Post-Conviction Hearing**

At the post-conviction hearing, Mack Garner testified that he was the Public Defender in Maryville, Tennessee and that he was appointed to represent Petitioner at trial. Mr. Garner took over the case from David Boyd at the Circuit Court level. Trial counsel conducted his own discovery and received an "incredible amount of evidence and documentation" from the State. He made a copy of the State's evidence for Petitioner so that Petitioner could review the evidence that would be introduced against him at trial. After reviewing the discovery independently, trial counsel met with Petitioner to discuss the facts and to make sure he and Petitioner "were agreed on all of what the facts were before [they] started talking about their legal consequences." The review of the evidence and these discussions took place over a period of approximately three weeks.

In addition to the discovery materials, the State also extended a plea offer of life without parole. The plea offer was available for a limited period of time. Trial counsel recalled that he was surprised that the State was not seeking the death penalty. He was aware that Petitioner's mental health was a possible area of defense. Trial counsel requested that the State leave the plea agreement open as an option pending a psychological evaluation, but the State insisted that Petitioner decide whether he was going to have an evaluation before the next court hearing. Trial counsel thought that in the amount of time it would take the court to process Petitioner's case and approve an expert psychiatrist, the State would likely submit a death penalty notice. He decided to conduct an independent investigation of Petitioner's mental health, to the extent possible, in the approximate forty-five days preceding the State's deadline for filing a death penalty notice.

Trial counsel was aware that Petitioner began taking the anti-depressant, Lexapro, approximately one month prior to the crime. Petitioner mentioned no specific problems with the drug, but said that he had some trouble with the drug and raised the issue of using the drug's side effects as a possible mental defense. Trial counsel researched Lexapro and its potential side effects by obtaining literature from the pharmaceutical manufacturing company and referring to the Physician's Desk Reference. His assistant researched the internet for articles related to the side effects of Lexapro. Trial counsel also consulted with a general medical practitioner as to whether use or abuse of the drug could result in legal insanity. He did not have time to locate an official expert qualified in the field of antidepressants who could attest to the possible effects of Lexapro.

According to trial counsel, his research revealed that "the likelihood of an evaluation and an expert's opinion finding that [Lexapro] could contribute to a legally [sic] insanity defense would be remote." He advised Petitioner that taking the time to locate an expert was not worth the risk of a death penalty notice unless the expert could say to an absolute certainty that Petitioner's mental state

was altered by Lexapro at the time he committed the crime. From the available evidence, trial counsel did not believe that this was possible. He felt that Petitioner's confession appeared rational, it provided a detailed description of his thought processes during commission of the crime, what he planned to do, what he was thinking about, and what his motivations were. Petitioner had even used the person of an officer to demonstrate what he had done to the victim.

On cross-examination, trial counsel stated that it was his opinion that had Petitioner gone ahead with his own mental evaluation and sought to offer that evaluation as proof at trial, the court would likely have granted the State a re-evaluation with a psychiatrist of its choosing. In the event that occurred, trial counsel said that Petitioner would have waived his *Miranda* privileges and been exposed "to cross-examination by a hostile doctor who can elicit almost any information he wants and in which everything is fair game, you know, from every misdeed [Petitioner has] ever done in his life, you know, to whatever bad thoughts he's had." Trial counsel explained that the information garnered from the evaluation would in turn be presented by the State's expert at trial. He said that all of the elicited answers would have been admissible in front of the jury, creating "the best possible kind of witness for the State." He explained this scenario to Petitioner.

Trial counsel said that based on the statements and actions of Petitioner with respect to the crime he saw no indication that Petitioner was suffering from a psychological impairment or an adverse reaction to the Lexapro at the time he committed the crime. Specifically, he said:

> [t]he two most incriminating points - - I mean, that were kind of horrifying, actually, was at one point in the confession, after the rape had been accomplished and while the victim was trussed on the bed, he began to consider that he had left his DNA inside of the woman, which I'm not sure if I would even think of that, in cold blood. But he thought about it. And again, according to his statement, made a conscious decision, I have to do something to prevent capture and to remove this evidence. So, again according to his statement, he turned - - I've forgot - - the television or radio or something there that was on so there would be a loud noise going on so that no one could hear. He went some distance . . . to where he had parked his car, he drove the car up to the door so that the victim would not be going a long distance in front of possible public gaze, he put her in the car, and then took her up to the mountains where, again in his statement, he planned murdering her for some period of time until the DNA would have dissipated to where no test could be found.
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> I found that to be the thought process of a very competent, rational, if cold, decision-maker who knew exactly what he was doing and why he was doing it. And if your idea is to get away with a crime you're not constrained by moral . . . problems, this is exactly an intelligent, rational decision. And to argue that he did not know what he was doing or was acting out of impulse or divorced from reality, in the face of that, struck me as impossible, that no person would believe it.

> He then - - the second, to me, really damaging point was he apparently, after driving back home, he got back on the internet and continued to converse with various of his friends as if nothing had happened. . . .

Trial counsel went on to say that Petitioner had talked at great length about how he tried to avoid detection. He felt that the actions Petitioner had taken "indicated very coherent, very focused, very goal-directed behavior to try to conceal his crime." Trial counsel felt that it was clear from Petitioner's statement that the crime was premeditated, and "the likelihood of mounting a successful mental defense was practically zero." Additionally, trial counsel had considered surveillance tapes recorded while Petitioner was showing police the crime scene and recounting what had occurred and how he had disposed of the body. The tapes indicated that Petitioner had continued to discard evidence up to one week after the incident. In all instances, Petitioner's confession was proven true by the physical evidence recovered by the police and documented by the surveillance tape. Trial counsel felt that if Petitioner's memory was so intact that he recalled exactly how events occurred and what he did with the evidence during and after the crime, then Petitioner was "quite well connected to reality" and not suffering from a mental defect.

Petitioner never suggested to trial counsel that his taped statement to the police had been altered or that any portion of the recorded confession was inaccurate. He likewise never suggested that there were missing portions of the tape which contained improper investigatory tactics. He made no allegations that any portion of his confession was improper. The tape showed that the police officers repeatedly read Petitioner his *Miranda* rights and that he continually agreed to tell his story without ever invoking his right to counsel.

In light of the overwhelming evidence against Petitioner and his concerns about a trial, trial counsel presented the State's plea offer to Petitioner. He said that Petitioner "almost immediately" accepted the offer as if he understood "that this is what ought to be done."

Petitioner testified that at the time of his preliminary hearing in General Sessions Court, he was represented by David Boyd. Petitioner informed Mr. Boyd that he had been taking Lexapro that was prescribed to him on April 23, 2003. He took the medicine as prescribed by the doctor. He said that the Lexapro "took away things from [his] mind." He thought that the medicine "would level out and do what it was supposed to," but the feeling worsened to the point that Petitioner felt like he was in a "dream." He said that he could see what he was doing, but he had no control over his actions. Petitioner said that prior to killing the victim, he sought medical help for the problems he was experiencing with the Lexapro. He went to the emergency room, but because of his insurance he could not afford the available assistance. He said that he was on the Lexapro and still "suffering from the effects" at the time he gave his statement to the Maryville police.

Petitioner provided his second trial counsel, Mr. Garner, with the same information he gave to Mr. Boyd. He told trial counsel how he felt while taking the medication, and trial counsel agreed to investigate the Lexapro. Petitioner said that he wanted trial counsel to investigate the effects of

the Lexapro because he was concerned that the medication was adversely affecting his mental health at the time of the offense. He said he wanted to explore the possibility of using this as a defense. Prior to pleading guilty, Petitioner never spoke with a psychological or mental health expert, nor did he speak with a medical doctor. He said that trial counsel told him that he and his family would have to pay for a psychological evaluation if he wanted to have one conducted.

Petitioner said that counsel also failed to investigate the circumstances surrounding his statement to police. He wrote notes to trial counsel regarding aspects of his statement that he felt were questionable. Petitioner said that investigators told him that the first part of his videotaped statement was destroyed by lightning and he relayed this information to trial counsel. He also told counsel that the missing portion of the videotape contained his requests for an attorney. He said that trial counsel failed to investigate whether the officers had denied Petitioner his right to counsel.

On cross-examination, Petitioner said that he had been taking Lexapro for approximately thirteen days prior to the offense. He said he did not remember telling a detective that the first time he had gone into the victim's apartment was one month prior to the offense, nor did he remember saying that he had broken into the victim's apartment three times prior to killing her. Petitioner likewise did not recall communicating with his friends over the internet immediately following commission of the crime. He said that he remembered "certain things" from the day of the incident but not everything.

Petitioner admitted that the day following his confession he waived his *Miranda* rights several times and at no point invoked his right to an attorney. He admitted that he spoke in "great detail" about the crime, even going so far as to use the person of Detective Moore to demonstrate what he did to the victim. He admitted that after he killed the victim, he attempted to alter the appearance of his car because the media was broadcasting a description of his car in relation to the murder. He said that he changed his car and destroyed evidence in an attempt to avoid detection.

Petitioner said that it was a tactical decision to plead guilty in the trial stage and then attempt to get a psychological evaluation through his petition for post-conviction relief. Petitioner said that prior to entering his guilty plea, trial counsel advised him that his best option for getting a fair trial would be to plead guilty and then file a petition for post-conviction relief. He said trial counsel also told him to claim that trial counsel was ineffective.

Detective Sergeant Carlos Hess, Jr. of the Maryville Police Department testified that on May 9, 2003, he and Detective Sharon Moore arrested Petitioner at his home and took him to the Justice Center for questioning. Detective Sgt. Hess read Petitioner his *Miranda* rights prior to interviewing him. He said that Petitioner waived his right to an attorney and at no point during any of the discussions did he request an attorney. Detective Sgt. Hess accompanied Petitioner throughout the three-hour interview. He later accompanied him to the national park where Petitioner had disposed of the victim's body. According to Detective Sgt. Hess, Petitioner never exhibited any confusion, lapse of memory about the criminal events, or manic, paranoid, or schizophrenic behavior. He said that Petitioner was "very clear in everything that happened."

On cross-examination, Detective Sgt. Hess said that he was not qualified to make a diagnosis regarding Petitioner's mental state at the time of the incident. He said that during the first hour of the interview Petitioner "mentioned a lawyer" twice, but "[h]e never asked for a lawyer." Essentially, Petitioner said "do I need a lawyer, am I in trouble?" Detective Sgt. Hess responded, "I cannot give you counsel. I've read you your rights. You have to make a decision. You're an adult, educated man. I can't give you advice. I read you your rights." Petitioner then said, "I want to cooperate and help you guys" and made the decision to waive his *Miranda* rights.

Petitioner's trial counsel was re-called as a rebuttal witness. He testified that he told Petitioner on more than one occasion, that the State would pay for a psychological evaluation, but he strongly advised against this option. He advised Petitioner that the only feasible option for conducting a psychological evaluation, without harm to his case, would be for his family to pay for a private evaluation, without notice to the State, and for the defense to maintain control over the information produced by the evaluation. Based on the information garnered from the private evaluation, the defense could then determine whether it was in Petitioner's best interest to subject himself to a possible psychological evaluation by the State.

Trial counsel said that he advised Petitioner that, if it would not jeopardize his plea agreement, he should look into the possibility of having a psychological evaluation conducted in prison. He told Petitioner that if he were able to obtain an evaluation without hurting his plea, and the evaluation showed that Petitioner was suffering from a mental defect at the time he committed the crime, then Petitioner should file a petition for post-conviction relief and claim that trial counsel was ineffective in failing to have an evaluation performed.

On cross examination, trial counsel said he was not aware of any recorded conversation between Petitioner and the investigators which was subsequently destroyed due to lightning, nor did he recall Detective Moore testifying to this fact at the preliminary hearing. He likewise did not recall Detective Moore testifying that Petitioner asked the investigators whether he should get a lawyer on two occasions during the initial interview.

**III. Analysis**

In his petition for post-conviction relief, Petitioner contends that his trial counsel was ineffective in failing to investigate issues of mental incompetency and diminished capacity, and in failing to file a motion to suppress Petitioner's statements to police. When a petitioner seeks post-conviction relief on the basis of ineffective assistance of counsel, he must first establish that the services rendered or the advice given was below "the range of competence demanded of attorneys in criminal cases." *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). Second, he must show that the deficiencies "actually had an adverse effect on the defense." *Strickland v. Washington*, 466 U.S. 668, 693, 104 S. Ct. 2052, 2067, 80 L. Ed. 2d 674 (1984). The error must be so serious as to render an unreliable result. *Id.* at 687; 104 S. Ct. 2064. It is not necessary, however, that absent the deficiency, the trial would have resulted in an acquittal, only that there would have been a different result. *Id.* at 695-96; 2068-69. Should the petitioner fail to establish either factor, he is not entitled to relief. *Id.* "Because a petitioner must establish both prongs of the test, a failure to prove either

deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim. Indeed, a court need not address the components in any particular order or even address both if the defendant makes an insufficient showing of one component." *Goad v. State,* 938 S.W.2d 363, 370 (Tenn. 1996). As to guilty pleas, the petitioner must establish a reasonable probability that, but for the errors of his counsel, he would not have entered the guilty pleas and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985).

On claims of ineffective assistance of counsel, "the petitioner is not entitled to the benefit of hindsight; may not second-guess a reasonably based trial strategy; and cannot criticize a sound, but unsuccessful, tactical decision made during the course of the proceedings." *Adkins v. State,* 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994) (citing *State v. Martin,* 627 S.W.2d 139, 141 (Tenn. Crim. App. 1981)). Such deference to the tactical decisions of counsel, however, applies only if the choices are made after adequate preparation for the case. *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App.1992). Claims of ineffective assistance of counsel are regarded as mixed questions of law and fact. *State v. Honeycutt,* 54 S.W.3d 762, 766 (Tenn. 2001); *State v. Burns,* 6 S.W.3d 453, 461 (Tenn. 1999). On appeal, the findings of fact made by the post-conviction court are conclusive and will not be disturbed unless the evidence contained in the record preponderates against them. *Brooks v. State*, 756 S.W.2d 288, 289 (Tenn. Crim. App. 1988). The credibility of the witnesses and the weight and value to be afforded their testimony are questions to be resolved by the trial court. *Bates v. State,* 973 S.W.2d 615, 631 (Tenn. Crim. App. 1997). When reviewing the application of law to those factual findings, however, our review is *de novo,* and the trial court's conclusions of law are given no presumption of correctness. *Fields v. State*, 40 S.W.3d 450, 457-58 (Tenn. 2001); *see also State v. England,* 19 S.W.3d 762, 766 (Tenn. 2000).

Petitioner first argues that trial counsel was ineffective in failing to investigate whether Petitioner was suffering from a mental defect at the time he committed the crime. In finding that the Petitioner received effective assistance of counsel, the trial court stated:

> Now, as to the medical and psychological testimony: [trial counsel's] investigation was undertaken within the time frame given by the Attorney General's Office within which to accept a plea offer that was made. And it's totally within the province of the Attorney General to decide if any plea offer at all is going to be made and, if so, what the offer is and, if so, how long it's to be effective. All the Defendant has the right to is to a fair trial under the indictment. The Defendant has no right to any kind of plea offer whatsoever. So, it's important to keep in mind that while [trial counsel] was operating under a 60-day time constraint - - I take it that's what it is, I haven't looked. But it was 60 days to decide whether or not to accept this plea agreement, not 60 days within which to prepare for a first-degree murder trial. Had he pled not-guilty, the time frame to prepare for trial would have been whatever was necessary for [trial counsel] and the State to do what they legitimately needed to prepare. And it would have been much beyond the first day of December of '03.

> But [trial counsel] talked with many people. He investigated the drug Lexapro, himself. He talked with a family member who is a medical doctor. He did not have time or the ability to get an expert to do that investigation, which would, of course, been preferable. He did not have time to have a State psychological evaluation performed. And he testified about the dangers of that and explained all that, I believe under the proof, to [Petitioner].
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> [Trial counsel] had in his possession the entire case file of the Attorney General's Office, which showed [Petitioner]'s actions before and after the 6th of May, by virtue of some e-mail and other evidence from the internet or taken from his computer, from his actions at work, from his actions as related to Ms. Jeffers' home - - breaking in, stealing checks, cashing checks, et cetera - - and also the statements that [Petitioner] made. So, [trial counsel] was faced with a decision - - and so was [Petitioner]: Do we jeopardize a plea offer that will allow Mr. Skeen, the Petitioner, to stay alive, to pursue what is from all indications a non-existent defense? And with all those facts in mind, [Petitioner] and [trial counsel] decided that would be the smart thing to do, and entered a plea to avoid what they both believed, under the facts - - and the Court agrees - - was an almost certain death sentence.
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> The only evidence presented in this hearing to the contrary is [Petitioner]'s statements that he couldn't tell dream from reality. But there's no other evidence, other than that, to show that any sort of psychological defense could have been presented.

We conclude that nothing in the record preponderates against the trial court's finding that trial counsel was effectively representing Petitioner when he chose not to seek a court-ordered psychological evaluation. Petitioner has failed to demonstrate prejudice because he offered no proof that he had been subject to a psychological evaluation which revealed that he was suffering from a mental defect at the time of the crime. Consequently, he has not shown that had a psychological evaluation been conducted, the outcome of his case would have been different because he would not have entered a guilty plea and would have insisted on going to trial rather than accepting the plea agreement. As noted by the trial court, the decision not to conduct a psychological evaluation was a strategic, tactical decision, made by counsel in an effort to avoid a death sentence. By his own testimony, Petitioner agreed with his counsel's decision and felt it was his in his best interest to forego an evaluation and accept the State's offer. Such a strategic decision will not be second-guessed by this Court. Accordingly, Petitioner is not entitled to relief on this issue.

Petitioner next argues that trial counsel was ineffective in failing to file a motion to suppress his statements to police. He argues that the statements were taken in violation of his *Miranda* rights. At the post-conviction hearing, trial counsel testified that he did not file a motion to suppress Petitioner's statements to police because Petitioner never indicated to him that he had been denied

his right to counsel or that the statements had otherwise been given in violation of his constitutional rights. Detective Sgt. Hess testified that Petitioner "mentioned" an attorney, but did not specifically request to have an attorney present. He said that he read Petitioner his *Miranda* rights several times, and on each occasion Petitioner waived his rights and voluntarily answered the investigators' questions. The post conviction court found that:

> In the videotaped statement, [Petitioner] asked a couple of times if he needed a lawyer, evidently. And that is very different from saying, "I want a lawyer." And at the same time, there was also proof from Mr. Hess that [Petitioner] signed several Miranda waivers at various points during the investigation. And there's no doubt in my mind that [Petitioner] understood that he had the right to have a lawyer and also understood that he didn't' have to say a word if he didn't want to.
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> So, I don't think there's any proof that would justify an attack on the statements that would keep them out of evidence and show that [trial counsel] was ineffective for failing to attack. The attack would have been fruitless.

Implicit in the post conviction court's holding, is the requirement that a defendant "must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Davis v. United States*, 512 U.S. 452, 459, 114 S. Ct. 2350, 2355, 129 L. Ed. 2d 362 (1994); *State v. Huddleston*, 924 S.W.2d 666, 670 (Tenn. 1996). The "making of an ambiguous or equivocal reference to an attorney" is not sufficient to invoke the right to counsel. *Davis*, 412 U.S. at 459, 114 S. Ct. at 2355; *Huddleston*, 924 S.W.2d at 670. Although the requirement of a clear assertion of the right to counsel may disadvantage those individuals who, for whatever reason, cannot make an unequivocal request for counsel, "the primary protection afforded suspects subject to custodial interrogation is the *Miranda* warnings themselves." *Id.* at 460, 114 S. Ct. at 2356; *Huddleston*, 924 S.W.2d. at 670.

It is clear from the record that the post-conviction court accredited the testimony of counsel and the detective and found that Petitioner did not make an unequivocal request for counsel. The court further found that although he made statements regarding counsel, Petitioner subsequently made a knowing and voluntary waiver of his *Miranda* rights, not once, but several times, and consequently waived his right to have counsel present during the interrogation. *See State v. Tidwell*, 775 S.W.2d 379, 386-87 (Tenn. Crim. App. 1989). As such, the post-conviction court found that counsel was not ineffective in failing to file a motion to suppress Petitioner's statements to police. Additionally, Petitioner has failed to show that he would not have entered a guilty plea had trial counsel filed a motion to suppress his statements to police. Indeed, Petitioner testified that he told the trial judge at his guilty plea proceeding that he had received effective assistance from trial counsel and that he had no complaints regarding trial counsel's representation in his case. After a thorough review, we find nothing in the record that preponderates against the trial court's findings. Accordingly, Petitioner is not entitled to relief on this issue.

## CONCLUSION

For the foregoing reasons, the judgments of the post-conviction court are affirmed.

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THOMAS T. WOODALL, JUDGE