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Davidson County Criminal Appeals: Worth the Effort, Despite the Data

by: Jason Gichner

Successfully appealing a criminal conviction is difficult. Most convictions are affirmed on appeal. As an attorney who handles these appeals, I am often confronted with the questions of whether a case is worth appealing and what is the likelihood of success. These are not easy questions to answer. First of all, defining success can be tricky. Reversal of the conviction and dismissal of the case is clearly the gold standard. There are, however, many other results that qualify as success. Often, the best a client can ever hope for is a reversal of the conviction and a remand for a new trial. In certain circumstances, the client is seeking a sentence reduction or merely a remand for a new sentencing hearing. The first task is establishing a legitimate goal for the appeal. Unrealistic goals result in unsuccessful appeals.

Once the appellate goal is established, a more informed discussion on the likelihood of success can take place. Clients need to approach criminal appeals with their eyes open and recognize that obtaining relief is an uphill struggle. In an attempt to illustrate how steep this uphill climb actually is, I reviewed all of the appellate criminal opinions for Davidson County cases from January 1, 2013 through October 22, 2013.

During this time period, 165 appellate decisions were issued involving criminal cases that originated in Davidson County.¹ The Tennessee Supreme Court issued two of these decisions. The remaining 163 opinions were issued by the Court of Criminal Appeals. Of these 165 appellate decisions, relief was granted in just 15 cases. This means that during this ten-month window, relief was granted in just over 9% of criminal appeals out of Davidson County.

It is also interesting to look at the type of relief granted. In certain cases, the relief was very minor, such as in *State v. Hidalgo*, where the Court of Appeals remanded the case for a merger of two felony offenses.² The ruling had no effect on the total length of the sentence, but did vacate one criminal conviction on Mr. Hidalgo's record.³ Another minor victory was achieved in *State v. Dalton*, where the case was remanded to determine the amount of jail credit the defendant was entitled to receive on her sentence.⁴

In other cases, significant relief was achieved through the appeal. Interestingly enough, two of these cases involved pro se litigants. In *State v. Thornton*, a pro se appellant successfully convinced the Court of Criminal Appeals to reverse and vacate 170 separate convictions for violating an order of protection.⁵ Since the defendant had been convicted at trial of 180 counts for violating an order of protection, and sentenced to ten calendar days for each count, all running consecutively, this constituted a major victory on appeal. The appellate ruling not only vacated 170 convictions, but it reduced the total sentence by 1,700 days.

Another pro se example is *Cole v. State*, where Mr. Cole convinced the Court of Criminal Appeals to reverse the judgment of the trial court which summarily dismissed his post-conviction request for DNA analysis.⁶ The case was remanded to the trial court for further proceedings.⁷

Significant victories were also obtained by litigants represented by counsel. In *State v. Webster*, the Court of Criminal Appeals held that the evidence presented at trial was insufficient to support a felony conviction.⁸ The case was remanded for sentencing as a misdemeanor theft, as opposed to felony theft.⁹ A new trial was granted in *State v. Tate*, where the appellate court held that the trial court erred in admitting improper testimony.¹⁰ The Tennessee Supreme Court held in *State v. Robinson* that the evidence at trial did not support the conviction for a Class A felony and remanded the case for resentencing as a Class B felony.¹¹ This likely resulted in a significant reduction of the total sentence given the range of punishment applicable to a Class A felony as opposed to a Class B felony.

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In looking at all the cases where some form of success was achieved on appeal, there is a pretty mixed bag of relief. Four cases consisted of post-conviction relief involving a remand to the trial court for consideration of the post-conviction evidence.¹² Two ordered a merger of offenses.¹³ Three cases involved either a reduction in the charge or a partial dismissal of the convictions.¹⁴ Three resulted in a reduction of the total sentence.¹⁵ Two resulted in the granting of a new trial, and one ordered a new sentencing hearing.¹⁶ There were not any appellate decisions involving Davidson County criminal cases in the last ten months where the entire case was reversed and dismissed.

So given these statistics, why would a client ever appeal a criminal conviction? The answer is because the stakes are so incredibly high. A criminal conviction involves significant consequences, such as incarceration, loss of voting rights, difficulty in obtaining future employment, and various other hardships. If there is even a small chance of obtaining relief, it is worth a shot. The downside is the cost of the appeal, which certainly needs to be considered, but the cost of not even trying to obtain relief is greater. While the percentage of relief over the last ten months is relatively low, it is still a high enough percentage to justify appealing every single case where legitimate issues exist to raise on appeal. After all, those 9% of successful litigants would never have obtained relief if they lost hope in the face of the uphill climb. Two of these guys even managed to make it up the hill without a lawyer. ■



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(Endnotes)

¹ This case survey entailed reviewing all Davidson County criminal appellate decisions as reported by the Tennessee Administrative Office of the Courts.

² *State v. Jose L. Hidalgo*, No. M2011-01314-CCA-R3-CD, 2013 WL 1197726 (Tenn. Crim. App., at Nashville, Mar. 26, 2013).

³ *Id.*

⁴ *State v. Latonya Deon Dalton*, No. M2012-01240-CCA-R3-CD, 2013 WL 3820995 (Tenn. Crim. App., at Nashville, July 22, 2013).

⁵ *State v. Elder Mark Anthony Thornton*, No. M2011-02444-CCA-R3-CD, 2013 WL 322202 (Tenn. Crim. App., at Nashville, Jan. 29, 2013).

⁶ *Willie Andrew Cole v. State*, No. M2011-01676-CCA-R3-PC, 2013 WL 4735471 (Tenn. Crim. App., at Nashville, Sept. 3, 2013).

⁷ *Id.*

⁸ *State v. Michael Webster*, No. M2012-00713-CCA-R3-CD, 2013 WL 2457181 (Tenn. Crim. App., at Nashville, June 5, 2013).

⁹ *Id.*

¹⁰ *State v. Joshua Brandon Tate*, No. M2011-02128-CCA-R3-CD, 2013 WL 3964122 (Tenn. Crim. App., at Nashville, July 31, 2013).

¹¹ *Robinson*, 400 S.W.3d 529.

¹² *Cole*, 2013 WL 4735471; *Anthony D. Forster v. State*, No. M2012-01641-CCA-R3-PC, 2013 WL 4033665 (Tenn. Crim. App., at Nashville, Aug. 8, 2013); *Marcus Pearson v. State*, No. M2012-01529-CCA-R3-PC, 2013 WL 1912586 (Tenn. Crim. App., at Nashville, May. 8, 2013); *Frederick Alexander Avery v. State*, No. M2011-02493-CCA-R3-PC, 2013 WL 451867 (Tenn. Crim. App., at Nashville, Feb. 6, 2013).

¹³ *State v. Forrest Melvin Moore*, No. M2012-02059-CCA-R3-CD, 2013 WL 3874934 (Tenn. Crim. App., at Nashville, July 25, 2013); *Hidalgo*, 2013 WL 1197726

¹⁴ *Webster*, 2013 WL 2457181; *Thornton*, 2013 WL 322202; *State v. Jim George Conaser*, No. M2011-02086-CCA-R3-CD, 2013 WL 4505410 (Tenn. Crim. App., at Nashville, Aug. 21, 2013).

¹⁵ *State v. Vernica Shabree Calloway*, No. M2011-00211-CCA-R3-CD, 2013 WL 5372122 (Tenn. Crim. App., at Nashville, Sept. 24, 2013); *Dalton*, 2013 WL 3820995; *Robinson*, 400 S.W.3d 529.

¹⁶ *Tate*, 2013 WL 3964122; *State v. Jermaine Johnson*, No. M2012-00391-CCA-R9-CD, 2013 WL 1200346 (Tenn. Crim. App., at Nashville, Mar. 26, 2013); *State v. Timothy P. Guilfooy*, No. M2012-00600-CCA-R3-CD, 2013 WL 1965996 (Tenn. Crim. App., at Nashville, May 13, 2013).

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