

IN THE CRIMINAL COURT OF HELBY COUNTY, TENNESSEE
30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION VI

CARLOS WILSON,)
 Petitioner)
VS.) No. 14-02325
))
STATE OF TENNESSEE,)
 Respondent.)

ORDER DISMISSING
PETITION FOR POST-CONVICTION RELIEF

This cause came to be heard upon the Petition for Post-Conviction Relief filed in this cause by the petitioner, *pro se*; and upon the entire record of this cause.

HISTORY OF THE CASE

The defendant was indicted by the Shelby County Grand Jury for the offenses of Rape and Aggravated Burglary on April 6, 2014. On July 11, 2019 the petitioner was convicted by a jury of his peers, as charged, in each count of the indictment. The petitioner moved the court to be allowed to proceed *pro-se* after sentencing and requested to represent himself at the Motion for New Trial and on appeal. The Court strongly advised the petitioner to not attempt to represent himself but the petitioner insisted and his request was granted. At the Motion for New Trial the petitioner raised ineffective assistance of counsel as well as several other grounds. After the Court denied the Motion for New Trial, the petitioner conducted his own appeal. During the appeal process the petitioner continued to file numerous motions with the trial court as well as the appellate courts. On November 17, 2020, after failing to file a brief in the case, the Court of Criminal Appeals ordered the petitioner to file his brief within 30 days or his appeal would be dismissed. On January 12, 2021 under docket number W2020-00465-CCA-R3-

CD the Court of Criminal Appeals dismissed the petitioner's appeal for failure to file a brief. On February 9, 2021 the petitioner filed this petition for post-conviction relief.

FINDINGS OF THE COURT

The Tennessee Post-Conviction Act allows for a collateral attack on a final conviction pursuant to statute and Rule 28 of the Rules of the Tennessee Supreme Court. However, the statute and Rule 28 set conditions that the petitioner must meet, and the court must find, to allow the petitioner to proceed to a hearing. T.C.A. §40-30-106(g) states:

(g) A ground for relief is waived if the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented unless:

- (1) The claim for relief is based upon a constitutional right not recognized as existing at the time of trial if either the federal or state constitution requires retroactive application of that right; or
- (2) The failure to present the ground was the result of state action in violation of the federal or state constitution.

In this case the petitioner raised many of his claims in his Motion for New Trial and was prosecuting an appeal pursuant to Rule 3 TRAP. By his own failure to act within the guidelines of the rules or the order of the Tennessee Court of Criminal Appeals his appeal was dismissed. By his failure to prosecute his appeal, the issues raised in his petition are now waived pursuant to T.C.A. §40-30-106(g). The exceptions to waiver contained within the section do not apply to the petitioner's case. Waiver of these issues for failure to appeal is supported by the case of *State v. Townes*, 56 S.W.3d 30 (Tenn.Crim.App. 2000) where the Court stated:

We conclude that these issues have been waived because they were not raised in the petitioner's direct appeal of his conviction. A post-conviction court shall dismiss a petition that states claims which have been waived. Tenn.Code Ann. § 40-30-206(f) (1997). "A ground for relief is waived if the petitioner personally or through an attorney failed to present it for

determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented,” with certain exceptions not applicable in the present case. Tenn.Code Ann. § 40–30–206(g) (1997). The opportunity to raise the issue during a direct appeal of the conviction, coupled with a failure to pursue that appeal or a failure to raise the issue during that appeal, constitutes a waiver of the issue pursuant to Code section 40–30–206(g) for purposes of a post-conviction relief proceeding. *State v. Benson*, 973 S.W.2d 202, 208 (Tenn.1998); *Alley v. State*, 958 S.W.2d 138, 148 (Tenn.Crim.App.1997).¹

Since the petitioner’s appeal was dismissed due to the petitioner’s failure to follow the Rules of Appellate Procedure and the order of the Court of Criminal Appeals, this Court finds that the issues contained in the petition for post-conviction relief could have been raised on appeal and therefore are waived and this petition should be dismissed.

IT IS, THEEFORE, ORDERED, ADJUDGED AND DECREED that the petitioner’s Petition for Post-Conviction Relief is hereby **DISMISSED** without the necessity of appointing counsel or conducting an evidentiary hearing.

Entered this 22ndth day of April 2021.

John W. Campbell, Judge
Criminal Court, Div. VI

¹ *State v. Townes*, 56 S.W.3d at pages 35-36.