

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs October 24, 2005

**RICHARD L. NORTHCOTT v. TENNESSEE BOARD OF PROBATION
AND PAROLE ET AL.**

**Appeal from the Chancery Court for Davidson County
No. 03-2983-I Claudia Bonnyman, Chancellor**

No. M2004-00524-COA-R3-CV - Filed January 12, 2006

This appeal involves a prisoner seeking to be released on parole. After the Tennessee Board of Probation and Parole declined to grant him parole, the prisoner filed a petition for a common-law writ of certiorari in the Chancery Court for Davidson County seeking judicial review of the Board's decision. The trial court dismissed the petition on the ground that it was not timely filed, and the prisoner appealed. We agree with the trial court's conclusion that the petition was not timely filed.

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

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Richard L. Northcott, Only, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Pamela S. Lorch, Senior Counsel, for the appellees, Tennessee Board of Probation and Parole, Charles Traugher, Sheila Swearingen, Ray Maples, Larry Hassel, and Townsend Anderson.

MEMORANDUM OPINION¹

Richard L. Northcott was convicted in July 1981 of criminal sexual conduct in the first degree² and is serving a life sentence at the Turney Center Industrial Prison in Only, Tennessee. On February 18, 2003, the Tennessee Board of Probation and Parole (Board) declined to parole him, and

¹Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

²*Northcott v. Tenn. Dep't of Corr.*, No. 01A01-9707-CH-00355, 1998 WL 205224, at *1 (Tenn. Ct. App. Apr. 29, 1998) (No Tenn. R. App. P. 11 application filed).

Mr. Northcott pursued an internal administrative appeal of this decision. The Board denied Mr. Northcott's administrative appeal on July 25, 2003.

Mr. Northcott filed a petition for a common-law writ of certiorari in the Chancery Court for Davidson County on October 8, 2003. The petition was dated October 1, 2003. The Board filed a motion to dismiss on the ground that the petition had not been filed within the sixty-day period required by Tenn. Code Ann. § 27-9-102 (2000). The trial court granted the Board's motion and dismissed the petition. Thereafter, Mr. Northcott filed a Tenn. R. Civ. P. 59.04 motion asserting that the time for filing his petition should be tolled because he was unaware of the time limits in Tenn. Code Ann. § 27-7-102. The trial court denied the motion, and Mr. Northcott has appealed.

The sixty-day time limit in Tenn. Code Ann. § 27-9-102 is mandatory and jurisdictional. *Hickman v. Tenn. Bd. of Paroles*, 78 S.W.3d 285, 289 (Tenn. Ct. App. 2001). The Board rendered its decision on July 25, 2003, and thus the sixty-day limit required by Tenn. Code Ann. § 27-9-102 expired on September 23, 2003. Mr. Northcott executed his petition and filed it after September 23, 2003. Therefore, the trial court properly dismissed his petition and denied his Tenn. R. Civ. P. 59.02 motion.

We affirm the dismissal of the petition for a common-law writ of certiorari and remand the case to the trial court for whatever further proceedings may be required. We tax the costs of this appeal to Richard L. Northcott. We also find that Mr. Northcott's petition for a writ of common-law certiorari and subsequent appeal are frivolous in accordance with Tenn. Code Ann. §§ 41-21-807(c), -816(a)(1) (2003).

WILLIAM C. KOCH, JR., P.J., M.S.