

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs, October 20, 2008

**JEREMY SHANE JOHNSON v. STATE OF TENNESSEE**

**Direct Appeal from the Criminal Court for Hamilton County  
No. 265798 Hon. Don W. Poole, Judge**

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**No. E2007-02531-COA-R3-CV - FILED DECEMBER 8, 2008**

D. MICHAEL SWINEY, J., concurring.

I concur in our Opinion in this case. I write separately to express my concern that apparently a juvenile in the situation such as Petitioner has no procedure available to him to petition for a post-adjudication review of a delinquency determination. I agree that the Tennessee statutes on post-conviction procedure pertain only to claims based upon a criminal conviction. I likewise agree that a juvenile adjudication is not a criminal conviction pursuant to Tennessee statutes. I also agree that Tenn. Code Ann. § 37-1-301 *et seq.*, pertaining to juvenile post-commitment procedures, specifically Tenn. Code Ann. § 37-1-302, are applicable only if the juvenile is in the custody of the Department of Children's Services pursuant to a commitment by a juvenile court of this State at the time the post-commitment petition is filed.

Here, Petitioner was never in the custody of the Department of Children's Services pursuant to a commitment by a juvenile court of this State. Under our holding, which I believe is mandated by the statutes and case law, a juvenile in a situation such as the Petitioner's has no avenue for post-adjudication review of a delinquency determination. However, perhaps we have misread the statutes and case law and our Supreme Court will provide some additional guidance as to a different interpretation of these statutes.

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D. MICHAEL SWINEY, JUDGE