

ROBIN M. COLE,)
)
 Petitioner/Appellant,) Appeal No.
) 01-A-01-9603-CH-00140
 v.)
)
 DONAL CAMPBELL, et al,) Hickman Chancery
) No. 9512136
 Respondents/Appellees.)

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR HICKMAN COUNTY
AT CENTERVILLE, TENNESSEE

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FILED

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**Cecil W. Crowson
Appellate Court Clerk**

AFFIRMED AND REMANDED

OPINION

Petitioner/appellant, Robin M. Cole, appealed from the judgment of the trial court granting the motion to dismiss of respondents/appellees, Donal Campbell, et al. The chancery court found that petitioner, a convicted felon, lacked standing to bring an action under section 10-7-503 of the Public Records Act.

Petitioner was convicted of automobile larceny in 1990 and sentenced to six years. After being released on parole, petitioner was charged with and convicted of three counts of burglary. As a result, he received three consecutive four year sentences. In August 1995, petitioner was housed at the Turney Center Industrial Prison and Farm in Only, Tennessee.

On 7 August 1995, a riot broke out at the Turney Center. Thereafter, prison officials placed petitioner in involuntary administrative segregation because of his participation in the riot. Later, petitioner requested all documents in the possession of the warden at Turney Center that related to the August 1995 riot. When petitioner failed to receive these documents, he turned to the courts.

On 14 December 1995, petitioner filed a petition in the Chancery Court for Hickman County requesting access to documents relating to the August 1995 riot pursuant to section 10-7-503 of the Public Records Act. The court issued an order requiring respondents to show cause why the court should not grant petitioner's request. Respondents moved to dismiss the petition and alleged that petitioner lacked standing to bring an action under the Public Records Act. Petitioner responded to the motion. In February 1996, the chancery court granted the motion and

dismissed the petition.

The sole issue before this court is whether the chancery court correctly found that petitioner, a convicted felon, lacked standing to bring an action under section 10-7-503 of the Public Records Act.

Tennessee Code Annotated section 10-7-503(a) provides that public records shall be made available to "any citizen of Tennessee" for personal inspection. Tenn. Code Ann. 10-7-503(a) (Supp. 1995). Moreover, a "citizen of Tennessee" may file a petition for access to public records. *Id.* § 10-7-505(a)(1992). The western section of this court has held that a person convicted of a felony which renders him or her infamous is not a "citizen of Tennessee" within the meaning of Tennessee Code Annotated sections 10-7-503 or 10-7-505 and lacks standing to bring an action for access to public records. *Ray v. Stanton*, No. 88-285-II, 1989 WL 14135, at * 2 (Tenn. App. 24 Feb. 1989); *Roberson v. Rose*, No. 01-A-01-9108-CV-00275, 1991 WL 261881, at *1 (Tenn. App. 13 Dec. 1991). Both the middle and eastern sections of this court have adhered to this holding. *In re the Records Sought by Daniel B. Taylor*, No. 01-A-01-9211-CH-00439, 1993 WL 73905, at *2-*3 (Tenn. App. 17 Mar. 1993)¹; *Bradley v. Fowler*, C.A. No. 1387, 1991 WL 25929, at *1 (Tenn. App. 4 Mar. 1991). By statute, a person convicted of any felony is infamous. Tenn. Code Ann. § 40-20-112 (1990) (amended by 1996 Tenn. Pub. Acts ch. 675, §33). Because petitioner was convicted of a felony, he is not a citizen for the purpose of the Public Records Act and lacks standing to bring an action under the Act.

¹ *Taylor* is a memorandum opinion. Thus, this court does not rely on the opinion as a basis for our decision, but simply cites it to show the affect of the Western section's decision in *Ray v. Stanton*.

This court has decided several other cases which involved similar issues; however, all of these cases are distinguishable from the present case. To explain, in 1995 this court decided a case involving a petition filed by a convicted felon requesting copies of certain documents. **Alcorn v. State**, No. 01-A-01-9507-CH-00315, 1995 WL 699964 (Tenn. App. 29 Nov. 1995). In **Alcorn**, this court held that a convicted felon did not have a statutory right to receive copies of certain public records. **Id.** at *2. It did not determine whether the felon was entitled to access to the documents. In this case, the petitioner is not requesting copies of the records; he is only requesting access.

In two of the other cases the petitioners were attorneys who represented felons. **Capital Case Resource Ctr., Inc. v. Woodall**, No. 01-A-01-9104-CH-00150, 1992 WL 12217 (Tenn. App. 29 June 1992); **Freeman v. Jeffcoat**, No. 01-A-01-9103-CV-00086, 1991 WL 165802 (Tenn. App. 30 August 1991). Also, the court did not directly address the standing issue as presented in the pending case in either opinion. Moreover, because the issue of whether a felon has standing was not necessary to the decision in either case, any discussion of that issue was dicta.

In **Freeman**, the court addressed the issue of whether a case is "terminated" when there is a post-conviction appeal pending. In **Woodall**, this court addressed the issue of whether the attorney/petitioner had standing. The court recognized that **Freeman** did not directly address the issue of whether a convicted felon has standing, but went on to state that "Judge Todd implicitly rejected the proposition that the client himself, a convicted felon, should be barred from maintaining an action under the Public Records Act." **Woodall**, 1992 WL 12217, at *7. After briefly discussing this concept, the court moved on to the issue

before it, whether the attorney had standing, and concluded that any "citizen" has standing including an attorney representing a felon regardless of whether the request is for the benefit of a non-citizen. This is not the issue currently before the court.

Therefore, it results that the judgment of the chancery court is affirmed, and the cause is remanded to the trial court for further necessary proceedings. Costs are assessed to petitioner/appellant, Robin M. Cole, for which execution may issue if necessary.

SAMUEL L. LEWIS, JUDGE

CONCUR:

BEN H. CANTRELL, JUDGE

WILLIAM C. KOCH, JR., JUDGE
DISSENTING IN SEPARATE OPINION