

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER SESSION, 1999

FILED
February 2, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

JEFFREY EUGENE DUNLAP,)

Appellant,)

VS.)

STATE OF TENNESSEE,)

Appellee.)

C.C.A. NO. E1999-987-CCA-R3-CD

KNOX COUNTY

HON. RAY L. JENKINS,
JUDGE

(Post-Conviction)

FOR THE APPELLANT:

JEFFREY EUGENE DUNLAP
Pro Se
Route 1, Box 660
Tiptonville, Tn 38079

FOR THE APPELLEE:

PAUL G. SUMMERS
Attorney General and Reporter

R. STEPHEN JOBE
Assistant Attorney General
425 Fifth Avenue North
Nashville, TN 37243

RANDALL E. NICHOLS
District Attorney General
City-County Building
Knoxville, TN 37902

OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal from an order of the trial court dismissing the Defendant's petition for post-conviction relief. The trial court determined that the petition was barred by the statute of limitations. We affirm the judgment of the trial court.

The Defendant was convicted of burglary and was sentenced to twelve years in the Department of Correction as a career offender. This Court affirmed his conviction, and the Tennessee Supreme Court denied his application for permission to appeal on April 13, 1998.¹

On April 30, 1999, the Defendant filed a petition for post-conviction relief in the criminal court for Knox County, the county of his conviction. The petition alleged generally that the Defendant had received the ineffective assistance of counsel at trial. The petition reflects that it was signed and sworn to on April 20, 1999 and states that it was being mailed on April 21, 1999. On May 10, 1999, the trial judge entered an order dismissing the petition, finding that it was barred by the statute of limitations. It is from the order of the trial court dismissing the petition that the Defendant appeals.

A petition for post-conviction relief must be filed within one year of the date of the final action of the highest state appellate court to which an appeal is taken. Tenn. Code Ann. § 40-30-202(a). If no appeal is taken, the petition must be filed within one year of the date on which the judgment becomes final. Id. If not filed within this time frame, consideration of the petition is barred by the statute of limitations. Id.

¹ See State v. Jeffrey Eugene Dunlap, No. 03-C01-9607-CR-00251, 1997 WL 476697 (Tenn. Crim. App., Knoxville, Aug. 21, 1997).

In this case, the petition was filed in the trial court on April 30, 1999, which is more than one year from the date the Tennessee Supreme Court denied the application to appeal. Tennessee Supreme Court Rule 28 sets forth procedural rules for post-conviction proceedings. These rules provide that a post-conviction petition which is filed by a pro se petitioner who is incarcerated is filed when it is received by the appropriate prison authorities for mailing. Tenn. Sup. Ct. R. 28, § 2(G). In this case, the petition recites that it was signed on April 20, 1999 and was being mailed on April 21, 1999. Both of these dates fall outside the one-year period after which consideration of the petition was barred.

In this appeal the Defendant argues that he exercised due diligence in attempting to file his petition in a timely fashion, that he made every effort to do so, that he was very persistent in his efforts, and that he tried in every way possible to meet the deadline. He requests that this Court take notice of his circumstances and remand the case for consideration by the trial court on the merits.

Our legislature made clear its firm intention that petitions filed outside the statute of limitations should not be considered, providing,

The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. Time is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and

the one-year limitations period is an element of the right to file such an action and is a condition upon its exercise.

Tenn. Code Ann. § 40-30-202(a).

We conclude that the trial judge correctly determined that the petition for post-conviction relief was barred by the statute of limitations. The judgment of the trial court is accordingly affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

JERRY L. SMITH, JUDGE