

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

OCTOBER 1999 SESSION

FILED
January 25 2000
Cecil Crowson, Jr.
Appellate Court Clerk

KARL HAMILTON, a.k.a. Randolph Prewitt,

Appellant,

vs.

STATE OF TENNESSEE,

Appellee.

* C.C.A. No. W1999-01675-CR-0043-P

* SHELBY COUNTY

* Hon. Carolyn Wade Blackett, Judge

* (Post-Conviction)

*

For Appellant:

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OPINION FILED: _____

REVERSED AND REMANDED

NORMA MCGEE OGLE, JUDGE

OPINION

The petitioner, Karl Hamilton, a.k.a. Randolph Prewitt, appeals the dismissal of his petition for post-conviction relief by the Shelby County Criminal Court. In April, 1996, the petitioner was convicted by a jury in the Shelby County Criminal Court of burglary and sentenced as a career, Range III offender to twelve years imprisonment in the Tennessee Department of Correction. The petitioner's conviction was affirmed on direct appeal by this court, and the Tennessee Supreme Court denied permission to appeal on April 20, 1998. State v. Karl Hamilton a.k.a. Randolph Pruitt, No.02C01-9611-CR-00390, 1997 WL 584303 (Tenn. Crim. App. at Jackson, September 19, 1997), perm. to appeal denied, (Tenn. 1998). The petitioner filed the instant pro se petition for post-conviction relief in the Shelby County Criminal Court on April 26, 1999. The post-conviction court summarily dismissed the petition as filed beyond the applicable statute of limitations. Following a review of the record and the parties' briefs, we reverse the order of dismissal and remand this case to the post-conviction court to afford the petitioner the opportunity to establish that he delivered the petition for post-conviction relief to the appropriate prison authorities for mailing within the applicable statute of limitations.

The Post-Conviction Procedure Act provides that, with certain exceptions, 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 or, if no appeal is taken, within one year of the date on which the judgment became final. Tenn. Code Ann. § 40-30-202(a) (1997). Additionally, the Post-Conviction Procedure Act mandates that a petition for post-conviction relief be filed with the clerk of the court in which the conviction occurred. Tenn. Code Ann. § 40-30-204(a) (1997). However, acknowledging the difficulties a pro se prisoner might encounter in delivering his petition to the appropriate destination within applicable time limitations, the Supreme Court adopted Sup. Ct. Rule 28, § 2(g). This rule provides that "[a] post-conviction petition filed by a pro se petitioner who is incarcerated is filed when it is received by the appropriate prison authorities for mailing." Id. See also Lightfoot v. State, No. 02C01-9703-CR-00129, 1998 WL

64005, at *2 (Tenn. Crim. App. at Jackson, February 18, 1998). Tenn. R. Crim. P 49(c) similarly provides that

[i]f petitions for post conviction relief or other papers are prepared by or on behalf of a pro se litigant incarcerated in a correctional facility, filing shall be timely if the papers are delivered to the appropriate individual at the correctional facility within the time fixed for filing.

Again, the record reflects that the one year statute of limitations in the petitioner's case began to run on April 20, 1998. Pursuant to his conviction, the petitioner has been incarcerated at the West Tennessee Penitentiary in Lauderdale County. The present petition for post-conviction relief includes a notary acknowledgment reflecting that the petition was executed and sworn in Lauderdale County on April 13, 1999. Additionally, the petition contains a certificate of service affirming that a copy of the petition was mailed, postage pre-paid, to the Shelby County Criminal Court on April 13, 1999, prior to the expiration of the statute of limitations on April 20, 1999. However, the record does not reflect whether the petitioner delivered the petition to the appropriate prison authorities for mailing as required by the rules set forth above or, instead, delivered the petition to a third party.

We conclude that the petitioner should be afforded the opportunity to establish whether or not the petition for post-conviction relief was delivered for mailing to an appropriate prison official within the applicable statute of limitations. If so, the petitioner should be allowed to proceed. If not, the post-conviction court should make the appropriate findings and dismiss the petition. "While dismissing pro se litigants' cases on procedural technicalities is not favored, pro se litigants must act within the time periods provided in the applicable statutes and rules of procedure to have their cases considered." Goodwin v. Hendersonville Police Department, No. 01A01-9509-CH-00423, 1997 WL 576340, at *5 (Tenn. App. at Nashville, September 17, 1997), reversed on other grounds, 5 SW3d 633 (Tenn. 1999). "[P]rocedural regulations are the door, and the only door, to make real what is laid down by substantive law." Id. at *3 (citation omitted).

For the foregoing reasons, we reverse the order of the post-conviction court dismissing the present petition for post-conviction relief and remand this case

for further proceedings consistent with this opinion.

Norma McGee Ogle, Judge

CONCUR:

John H. Peay, Judge

Alan E. Glenn, Judge