

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1999 SESSION

FILED

March 9, 2000

**Cecil Crowson, Jr.
Appellate Court Clerk**

SHAWN D. LESLEY,)
)
 Appellant,)
)
 v.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

C.C.A. No. M1999-00076-CCA-R3-PC
Davidson County
Honorable Steve R. Dozier, Judge
(Post-Conviction)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

ALAN E. GLENN, JUDGE

OPINION

The petitioner, Shawn D. Lesley, was convicted of second degree murder by a Davidson County jury in the death of fifteen-month-old Laura Waters. On February 29, 1996, he was sentenced by the trial court to a term of twenty years in prison as a Range I standard offender. The defendant's motion for a new trial was denied on October 4, 1996, and he appealed to this court. His conviction and sentence were affirmed on April 20, 1999.¹

On March 29, 1999, prior to the final action taken by this court on defendant's direct appeal, the defendant filed a petition with the Davidson County Criminal Court for post-conviction relief. On April 13, 1999, that petition was denied by the trial court because the defendant's appeal from his conviction was, at the time, still pending before this court. The defendant appealed the trial court's dismissal of his petition for post-conviction relief. We affirm the dismissal by the trial court.

ANALYSIS

Post-conviction relief procedures are controlled by the provisions of the Post-Conviction Procedure Act of 1995 as set out in Tenn. Code Ann. §§ 40-30-201 to -310 (1997 & Supp. 1999). Section 40-30-202 states, in part:

When prisoners may petition for post-conviction relief. —

(a) Except as provided in subsections (b) and (c)², a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) 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 (1) year of the date on which the judgment became final, or consideration of such petition shall be barred.

¹See State v. Shawn D. Lesley, No. 01C01-9702-CR-00068, 1999 WL 233636 (Tenn. Crim. App., Nashville, Apr. 20, 1999).

²These subsections are not relevant to our determination of petitioner's appeal.

According to statute, the defendant has a one-year window for filing a petition for post-conviction relief, calculated from the date of the final action of the highest state appellate court to which an appeal is taken. A post-conviction petition “complaining of the original conviction and sentence, may not be maintained while a direct appeal of the same conviction and sentence is being prosecuted. Both remedies may not be pursued simultaneously.” Jones v. State, 453 S.W.2d 433, 434 (Tenn. Crim. App.), cert. denied (Tenn. 1970). The petition filed on March 29, 1999, was premature in that it was filed while the defendant’s direct appeal was pending before this court, and therefore, it cannot be maintained.³ We note, additionally, that we cannot treat this as a habeas corpus petition because the judgment is not invalid on its face and because a habeas corpus petition must be filed in the county of incarceration. See Tenn. Code Ann. § 29-21-105 (1980).

CONCLUSION

The trial court properly dismissed the defendant’s petition for post-conviction relief as premature.

ALAN E. GLENN, JUDGE

CONCUR:

JOE G. RILEY, JUDGE

JAMES CURWOOD WITT, JR., JUDGE

³See Gary Rocco Denami v. State, No. 01C01-9507-CR-00224, 1996 WL 374109, at *1 (Tenn. Crim. App., Nashville, July 5, 1996) (holding that the trial court properly found that a petition for post-conviction relief filed while the defendant’s direct appeal was pending was filed prematurely).