

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY SESSION, 2000

MARSHALL H. LOCKE, JR.,)
)
 Appellant,)
)
 VS.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)
)

M1999-00939-CCA-R3-PC

FILED
March 17, 2000
COSTER, Rowson, Jr.
Appellate Court Clerk

WILLIAMSON COUNTY

HON. TIMOTHY E. COSTER,
JUDGE

(Post-Conviction)

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This case presents us with a second opportunity to consider the Defendant's request for post-conviction relief. The Defendant, Marshall H. Locke, Jr., was convicted of first degree burglary and aggravated rape in 1987. In 1988, this Court affirmed his conviction, and the Tennessee Supreme Court denied permission to appeal in 1989.¹ The Defendant subsequently filed a petition for post-conviction relief. Following appointment of counsel and an evidentiary hearing, the trial court denied post-conviction relief in 1992, and this Court affirmed the trial court's ruling.² The supreme court denied permission to appeal in 1993.³ On June 10, 1999, the Defendant filed a second petition for post-conviction relief, alternatively entitled, "Motion to Reopen Post-Conviction Petition." The trial court summarily dismissed the petition on June 21, 1999, citing the Defendant's prior petition and the one-year statute of limitations governing post-conviction petitions. See Tenn. Code Ann. § 40-30-202(a), (c). The Defendant now appeals this ruling. We affirm the judgment of the trial court.

The Defendant presents the following issues for our review: (1) whether the trial court erred by dismissing his second petition for post-conviction relief without setting forth in the order of dismissal (a) all grounds raised and (b) findings of fact

¹ See State v. Locke, 771 S.W.2d 132 (Tenn. Crim. App. 1988).

² See Marshall Howard Locke, Jr. v. State, No. 01C01-9203CC0110, 1992 WL 389631 (Tenn. Crim. App., Nashville, Dec. 31, 1992).

³ Id.

and conclusions of law regarding each ground; (2) whether the trial court erroneously dismissed his petition on the basis of his prior petition and the statute of limitations when he alleged in his petition that new evidence existed to support his innocence; (3) whether the trial court erred by dismissing his petition based on the statute of limitations “when, in fact, the statute of limitations should have been tolled pursuant to T.C.A. § 28-1-106, as a result of the [Defendant’s] incompetency during the time provided for filing such petition”; and (4) whether the trial court erred by dismissing his petition without first determining whether the State knowingly withheld exculpatory evidence from the defense and whether the alleged evidence supported application of the “Burford due process exception to the statute of limitations.”

The 1995 Post-Conviction Act governs all petitions for post-conviction relief filed after May 10, 1995 “and any motions filed after that date to reopen petitions for post-conviction relief which were concluded prior to May 10, 1995.” Tenn. Code Ann. § 40-30-201 compiler’s notes. The 1995 Act therefore governs this petition, alternatively presented as a motion to reopen. Pursuant to Tennessee Code Annotated § 40-30-202(a), a petitioner must petition for post-conviction relief within one year of the date of the final action of the highest state appellate court to which an appeal is taken. Furthermore, the Act states, “In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed.” *Id.* § 40-30-202(c). However, the Act allows a petitioner to move to reopen a concluded post-conviction proceeding under specific, limited

circumstances, which are set forth at Tennessee Code Annotated § 40-30-217.

Having reviewed this record, we find no error on the part of the trial court. Not only was the Defendant's petition filed outside of the one-year statute of limitations, but it was also his second petition for post-conviction relief. As previously stated, according to Tennessee Code Annotated § 40-30-202, "[A]ny second or subsequent petition [for post-conviction relief] shall be summarily dismissed," unless the petitioner can demonstrate certain specific grounds to support reopening the initial petition for post-conviction relief. See id. § 40-30-217(a)(1)-(4). The trial court, therefore, did not err by summarily dismissing the Defendant's petition for post-conviction relief.

Moreover, we find no grounds to support reopening the Defendant's first post-conviction petition. See id. § 40-30-217. Although the Defendant alleges new evidence establishing his innocence, he fails to specify any "new scientific evidence" in support of this contention. Id. § 40-30-217(a)(2) (emphasis added). Rather, he merely contends that "modern testing methods would reveal that someone other than the Petitioner committed the crimes, and that in light of the new evidence, such testing should be conducted." Furthermore, with regard to his claim of new evidence, the Defendant does not "set out the factual basis" for the claim or support it by affidavit, as required by Tennessee Code Annotated § 40-30-217(b). Finally, the Defendant does not allege, nor do we find, any other ground to justify reopening his previous petition for post-conviction relief. See id. § 40-30-217(a)(1), (3), (4).

The judgment of the trial court is accordingly affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

L. T. LAFFERTY, SENIOR JUDGE