

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1996 SESSION

FILED

February 29, 1996

**Cecil W. Crowson
Appellate Court Clerk**

JOHNNY L. COLWELL, * C.C.A. # 01C01-9507-CR-00221
APPELLANT, * DAVIDSON COUNTY
VS. * Hon. Ann Lacy Johns, Judge
STATE OF TENNESSEE, * (Post-Conviction)
APPELLEE. *

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OPINION FILED: _____

AFFIRMED

Gary R. Wade, Judge

OPINION

The petitioner, Johnny L. Colwell, appeals the trial court's dismissal of his petition for post-conviction relief. The single issue on appeal is whether the petition is barred by the statute of limitations.

We affirm the judgment of the trial court.

On October 1, 1981, the petitioner received a life sentence for robbery accomplished by use of a deadly weapon. Tenn. Code Ann. § 39-3901 (Supp. 1980). This court affirmed the conviction and sentence on direct appeal. State v. Robert F. Ambrose and Johnny L. Colwell, No. 82-1-III (Tenn. Crim. App., at Nashville, August 11, 1982). There was no application for appeal to our supreme court.

This petition for post-conviction relief, alleging ineffective assistance of counsel at trial and on direct appeal, was filed February 22, 1994. Clearly, the three-year statute of limitations had passed by that time. See Tenn. Code Ann. § 40-30-102. All claims arising prior to 1986 had to be filed by July 3, 1989. State v. St. John, 751 S.W.2d 453 (Tenn. Crim. App. 1988); see also Emmett Ronnie Hammonds v. State, No. 967 (Tenn. Crim. App., at Knoxville, April 5, 1991). The petitioner, however, argues that the imposition of a three-year statute of limitations on post-conviction proceedings violates Art. I, § 17 of the Tennessee Constitution:

Open courts - Redress of injuries - Suits against the State.--That all courts shall

be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.

In Abston v. State, 749 S.W.2d 487 (Tenn. Crim. App. 1988), this court held that there was no right to an uncontrolled period of time within which to file suit under the Post-Conviction Procedure Act. See Tenn. Code Ann. §§ 40-30-101 through -124. In Stutts v. Ford Motor Co., 574 F. Supp. 100, 102-04 (M.D. Tenn. 1983), it was held a statute of limitation as to products liability claims did not violate Art. I, § 17 of our state constitution.

More recently, this court ruled that a post-conviction petitioner, barred from suit by Tenn. Code Ann. § 40-30-102, had not been deprived of his state constitutional right to "open courts." Thomas A. Hartley v. State, No. 03C01-9301-CR-00006 (Tenn. Crim. App., at Knoxville, September 15, 1993), perm. to appeal denied, (Tenn. 1994).

Based upon the foregoing, dismissal of this petition was warranted. The judgment is, therefore, affirmed.

Gary R. Wade, Judge

CONCUR:

Paul G. Summers, Judge

Joseph M. Tipton, Judge