IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1996 SESSION

JOHNNIE BUFORD, JR.,	)
	) C.C.A. No. 02C01-9506-CR-00155
Appellant,	)
	) Shelby County
V.	)
	) Honorable John P. Colton, Jr., Judge
	)
STATE OF TENNESSEE,	) (Post-Conviction)
	)
Appellee.	)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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John W. Pierotti
District Attorney General

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Memphis, TN 38103

OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellant, Johnnie Buford, Jr., pled guilty to rape on June 12, 1961. He was sentenced to life. He filed for post-conviction relief in 1993 alleging that he received ineffective assistance of counsel and that his plea was unknowingly and involuntarily entered. The trial court dismissed his petition as untimely. We affirm the trial court's judgment.

On appeal, the appellant contends: (1) that the trial court erred in dismissing his petition without ordering compliance with Tenn. Code Ann. § 40-30-114(b), and (2) that application of the three-year statute of limitations "should not effect [sic] the determination of Petitioner's case where on it's [sic] face the record is silent or absent."[1]

The unique facts of this case are irrelevant to our disposition. The appellant claims that his 1961 plea is constitutionally infirm. He contends that the plea was unknowingly entered due to his counsel's ineffective assistance. The appellant's claim of an involuntary plea, however, has been cognizable since, at least, 1977. See State v. Mackey, 553 S.W.2d 337 (Tenn. 1977) (holding record must affirmatively demonstrate plea was both voluntary and knowledgeable). His right to receive the effective assistance of counsel during the plea process was cognizable in 1985. See Hill v. Lockhart, 474 U.S. 52 (1985) (holding Strickland test applies to plea process). Accordingly, the appellant has had more than an adequate opportunity to present his now stale claims.

Next, the appellant urges this Court to find that the state's failure to produce records deprived him of his opportunity to present a timely petition. There is no evidence that the appellant attempted to obtain his records prior to

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[1]Apparently, records and transcripts of appellant's case have been either misplaced or destroyed. The records, however, are not material to the appellant's immediate issue, the timeliness of his petition.

1993. Accordingly, the appellant has suffered no prejudice by the state's inability to furnish the records.

AFFIRMED

_____
PAUL G. SUMMERS, Judge

CONCUR:

_____
JOSEPH M. TIPTON, Judge

_____
JERRY L. SMITH, Judge