

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL SESSION, 1996

FILED
April 25, 1996
~~Geoff Crowder Jr.~~
Appellate Court Clerk

ANTHONY I. HAYES,)

Appellant,)

VS.)

STATE OF TENNESSEE,)

Appellee.)

C.C.A. NO. 03C01-9501-CR-0028-1

MONROE COUNTY

HON. R. STEVEN BEBB
JUDGE

(Post Conviction)

ON APPEAL FROM THE JUDGMENT OF THE
CRIMINAL COURT OF MONROE COUNTY

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal as of right from an order of the trial court dismissing a petition for post-conviction relief without an evidentiary hearing. The trial court ruled that all of the issues raised in the petition had either been previously determined or had been waived, and furthermore that consideration of the petition was barred by the statute of limitations. We affirm the order of the trial court.

In 1975 the Defendant was convicted in the Monroe County Criminal Court of murder in the first degree and his punishment was fixed at death by electrocution. After the death penalty statute under which he was sentenced to die was held to be unconstitutional, Governor Ray Blanton commuted the Defendant's death sentence to life imprisonment on February 8, 1977. On direct appeal, this court affirmed the Defendant's first degree murder conviction and his life sentence, in an opinion filed on May 24, 1977. In that opinion, this court observed that, "the evidence in this case is clear and convincing to show the Defendant's guilt."¹

The Defendant's first post-conviction petition was dismissed by the trial court after conducting an evidentiary hearing. In an opinion filed on November 19, 1985, this court affirmed the dismissal of the previous post-conviction petition

¹Anthony Hayes v. State, No. 40, Monroe County, (Tenn. Crim. App., Knoxville, filed May 24, 1977).

stating, “the matters before us probably have the least merit of the many merit-less post-conviction proceedings we have seen.”²

On April 5, 1995, some twenty years after his conviction, the Defendant filed this petition for post-conviction relief. The trial court dismissed the petition without appointing counsel and without conducting an evidentiary hearing. It is from the order dismissing this petition that the petitioner appeals.

The petition alleges generally that the Defendant is being unconstitutionally detained and restrained pursuant to an illegal and void sentence, that the trial court committed error in instructing the jury in various regards, that the trial court did not have jurisdiction over the offense, that trial counsel was ineffective by not detecting the trial judge’s alleged errors, and that the Defendant’s prior post-conviction counsel was incompetent.

We see no reason to analyze the various issues raised in the petition. This petition is clearly time-barred by the statute of limitations applicable to it which reads:

A petitioner in custody under sentence of a court of this state must petition for post-conviction relief under this chapter within three (3) years of the date of the final action of the highest state appellate court to which an appeal is taken or consideration of such petition shall be barred.³

The 1986 amendment creating the three-year statute of limitations was effective July 1, 1986. This court ruled that the statute of limitations commenced

²Anthony I. Hayes v. State, No. 95, Monroe County, (Tenn. Crim. App., Knoxville, filed Nov. 19, 1985).

³Tenn. Code Ann. § 40-30-102 (repealed 1995).

on the effective date of the amendment, July 1, 1986, as to those potential suits yet unfiled. State v. Masucci, 754 S.W.2d 90, 91 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1988). Thus, a person whose judgment became final prior to the effective date of the amendment had three years until July 1, 1989, to file a petition for post-conviction relief. This petition was filed more than five years after the statute of limitations had run.

The judgment of the trial court dismissing this petition for post-conviction relief is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

GARY R. WADE, JUDGE

WILLIAM M. BARKER, JUDGE