

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL SESSION, 1996

**FILED**  
April 25, 1996  
Cecil Crowson, Jr.  
Appellate Court Clerk

**BRYAN SCOTT VEAL,** )  
 )  
Appellant, )  
 )  
**VS.** )  
 )  
**STATE OF TENNESSEE,** )  
 )  
Appellee. )

C.C.A. NO. 03001-9508-CR-00235  
  
**KNOX COUNTY**  
  
**HON. MARY BETH LEIBOWITZ**  
**JUDGE**  
  
(Post-Conviction)

**ON APPEAL FROM THE JUDGMENT OF THE  
CRIMINAL COURT OF KNOX COUNTY**

FOR THE APPELLANT:

MARK E. STEPHENS  
District Public Defender  
Sixth Judicial District  
  
PAULA R. VOSS  
Assistant Public Defender  
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FOR THE APPELLEE:

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City-County Building  
Knoxville, TN 37902

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 consideration of the petition was barred by the statute of limitations. We affirm the order of the trial court.

On July 9, 1984, the Defendant was convicted of first degree murder in the perpetration of a felony upon his plea of guilty in the Criminal Court of Knox County. He was sentenced to life imprisonment.

On August 22, 1994, some ten 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 Defendant appeals.

On this appeal, the Defendant argues that the trial court should have conducted an evidentiary hearing to determine whether he received ineffective assistance of counsel at his guilty plea and whether his guilty plea was voluntary. The Defendant argues that the statute of limitations should not be applicable to his petition because he believed that his trial attorney was going to assist him in filing all future petitions and because he was unaware that there was a statute of limitations applicable to post-conviction proceedings. He further argues that the trial court erred by not allowing him to present evidence to establish that the statute of limitations should not be applied to his petition.

We see no reason to address the merits of the petition for post-conviction relief. Even if the issues presented have merit, consideration of 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.<sup>1</sup>

The 1986 amendment creating the three-year statute of limitations was effective July 1, 1986. This court ruled that the statute of limitations commenced on the effective date of the amendment, July 1, 1986, as to those potential suits yet unfilled. State v. Masucci, 754 S.W.2d 90, 91 (Tenn. Crim. App. 1988), 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 Defendant presents no argument which convinces us that the statute of limitations might be inapplicable to this petition. He also presents no argument which convinces us that the application of the statute of limitations to the petition violates the Defendant's constitutional right to due process.

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

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<sup>1</sup>Tenn. Code Ann. § 40-30-102 (repealed 1995).

DAVID H. WELLES, JUDGE

CONCUR:

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GARY R. WADE, JUDGE

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WILLIAM M. BARKER, JUDGE