

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JIMMY L. MATHIS,

Petitioner,

V.

STATE OF TENNESSEE,

Respondent.

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C.C.A. NO. 02C01-9605-CC-00181

HARDIN COUNTY

NO. 7381

FILED

July 26, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

ORDER

This matter is before the Court upon the state's motion, pursuant to Rule 20 of the Rules of the Court of Criminal Appeals, to affirm the judgment of the trial court by order rather than by formal opinion. This case represents a pro se appeal from the trial court's denial of the petitioner's second petition for post-conviction relief. The record in this matter was filed with the Court on May 30, 1996, and the petitioner filed his brief on June 12, 1996.

On January 25, 1996, the petitioner filed a pleading entitled "Second Petition for Post-Conviction Relief" in the trial court. On February 5, 1996, the trial court dismissed the petition, stating:

It further appearing to the Court that the petitioner has previously filed a petition for post conviction relief and that the same was dismissed by order of the court after a full and exhaustive hearing by order dated January 25, 1996. The petitioner through counsel has filed a formal notice of appeal to the West Tennessee Court of Criminal Appeals by notice dated January 25, 1996. It further appearing to the Court pursuant to TCA § 40-30-202© that because the petitioner's prior petition was resolved on the merits by court of competent jurisdiction that the present petition is subject to summary dismissal.

The record on appeal of the petitioner's first petition for post-conviction relief, C.C.A. No. 02C01-9605-CC-00177, was filed with the Court on May 30, 1996. The briefs have not yet been filed in that appeal. On June 21, 1996, the Court entered an order directing the clerk to consolidate the above-styled appeal with No. 02C01-9605-CC-00177, and allowing the state to file one appellate brief for the two appeals within thirty days from the filing of the petitioner's brief in No. 02C01-9605-CC-00177.

Having reviewed the record in light of the petitioner's brief and the state's motion, and having found that the trial court appropriately dismissed the petitioner's second petition for post-

conviction relief because the prior petition filed by the petitioner was resolved on the merits by a court of competent jurisdiction, see T.C.A. § 40-30-202(c), it is hereby ORDERED that the state's motion is granted. Pursuant to Rule 20 of the Rules of the Court of Criminal Appeals, we affirm the trial court's dismissal of the petitioner's second petition for post-conviction relief. The clerk is directed to separate C.C.A. No. 02C01-9605-CC-00177 from the above-styled cause, and the appeal of that case shall proceed in accordance with the Rules of Appellate Procedure. Costs of the above-styled appeal shall be assessed against the petitioner.

ENTER, this the ____ day of July, 1996.

DAVID G. HAYES, JUDGE

JOE B. JONES, PRESIDING JUDGE

PAUL G. SUMMERS, JUDGE