

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1996 SESSION

<p><b>FILED</b></p> <p>February 12, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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DOYLE CARTER,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

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C.C.A. NO. 01C01-9511-CC-00398

DAVIDSON COUNTY

HON. WALTER C. KURTZ,  
JUDGE

(Petition for Post-Conviction  
Relief)

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FOR THE APPELLEE:

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OPINION FILED: \_\_\_\_\_

AFFIRMED

**JOE G. RILEY**  
JUDGE

## OPINION

Petitioner is serving a sentence for second degree murder. He seeks post-conviction relief alleging ineffective assistance of counsel and an unconstitutional jury charge defining “reasonable doubt.” The trial court dismissed the petition without a hearing finding that the petition was barred by the statute of limitations. We affirm.

Petitioner’s 1990 conviction for second degree murder was affirmed by this Court on October 29, 1991. State v. Doyle D. Carter, C.C.A. No. 01C01-9011-CR-00321, Davidson County. The Tennessee Supreme Court denied application to appeal on March 16, 1992. The present petition seeking post-conviction relief was filed June 12, 1995.

Prior to the adoption of the recent Post-Conviction Procedure Act, such petitions had to be filed within three (3) years of the date of the final action of the highest state appellate court to which an appeal was taken. T.C.A. § 40-30-102 (repealed by 1995 Tenn. Pub. Act 207, §1). Accordingly, the three-year statute of limitations would have expired on March 16, 1995.

The new Post-Conviction Procedure Act, T.C.A. § 40-30-201 et. seq. (Supp. 1996), applies to all post-conviction petitions filed after May 10, 1995. See 1995 Tenn. Pub. Act 207, § 3. The new legislation provides, in pertinent part, that . . . “notwithstanding any other provision of this part to the contrary, any person having ground for relief recognized under this part shall have at least one (1) year from May 10, 1995, to file a petition or a motion to reopen a petition under this part.” Compiler’s Notes to T.C.A. § 40-30-201 (Supp.1996). At issue is whether this new legislation revives a petitioner’s right to seek relief when the prior statute of limitations expired before the effective date of the new legislation.

Our Court has reached inconsistent conclusions concerning this issue. Arnold

Carter v. State, C.C.A. No. 03C01-9509-CC-00270, Monroe County (Tenn. Crim. App. filed July 11, 1996, at Knoxville) held that the new legislation provided a one-year window in which any petitioner could seek post-conviction relief even if that petition had previously been barred by the statute of limitations.

Johnny L. Butler v. State, C.C.A. No. 02C01-9509-CR-00289, Shelby County (Tenn. Crim. App. filed December 2, 1996, at Jackson) held that the new legislation does not provide petitioners previously barred by the three-year statute of limitations a new one-year period within which to file a petition. The panel held that the new legislation, at most, provided those barred with an opportunity to reopen a prior petition within one year of the new legislation's effective date. T.C.A. § 40-30-217 (Supp.1996).

We conclude that Butler properly interpreted the statutes. The legislative intent of the new Post-Conviction Procedure Act was to limit the number of post-conviction petitions a petitioner could file and to limit the time within which to file them. The statute of limitations was reduced from three (3) years to one (1) year. Obviously, the legislature did not intend to open the floodgate and allow petitioners barred by the statute of limitations years before to have a new opportunity to file or refile such a petition.

Furthermore, the language of the new legislation providing that "... any person having ground for relief recognized under this act shall have at least one (1) year from the effective date of this act to file a petition..." does not re-ignite previously time-barred petitions. A ground for relief time-barred prior to the effective date of the new legislation is clearly not "a ground for relief recognized under this act."

We, therefore, conclude this petition is time-barred. Furthermore, there are no allegations which would appropriately toll the statute. See Burford v. State, 845 S.W.2d 204 (Tenn. 1992); T.C.A. § 40-30-202(b) (Supp.1996). We affirm the judgment below.

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JOE G. RILEY, JUDGE

**CONCUR:**

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**PAUL G. SUMMERS, JUDGE**

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**WILLIAM M. BARKER, JUDGE**