

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1996 SESSION

<p>FILED</p> <p>January 9, 1997</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

RICKIE J. WALLEN

Appellant,

V.

STATE OF TENNESSEE,

Appellee.

)
) C.C.A. No. 03C01-9601-CC-00039
)
) Sullivan County
)
) Honorable Frank L. Slaughter, Judge
)
) (Post-Conviction)
)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
 Judge

OPINION

In 1985 the appellant, Rickie J. Wallen, was convicted by a jury of armed robbery. At the time of the robbery he was on parole for 17 forgery convictions which occurred in 1975. He was given a 40 year sentence as a persistent offender based on the armed robbery having been committed while he was on parole from the 1975 forgery convictions. At his sentencing hearing, he also pled guilty to three additional charges of armed robbery. The sentencing court found the appellant to be a Range II, persistent offender. He received three concurrent life sentences. Habitual criminal charges were dismissed.

The appellant filed a petition for post-conviction relief in 1988 attacking the 1975 forgery convictions on the ground that the guilty pleas were not knowing and voluntary. Wallen v. State, 863 S.W.2d 34, 35 (Tenn. 1993). Relief was granted and the post-conviction court set aside the 1975 convictions and resentenced the appellant on the 1985 armed robbery conviction. Id. The court reasoned that the appellant's status as a persistent offender could not be sustained after reversal of the 1975 convictions. The post-conviction court reaffirmed his status as an especially aggravated offender and found that his 40 year sentence was appropriate. The court found the three 1985 guilty pleas unaffected by its ruling.

In September 1995, the appellant filed a petition for post-conviction relief attacking his four 1985 convictions. The trial court dismissed the petition as untimely. We agree with that decision.

The appellant filed his post-conviction relief petition on September 22, 1995. He was convicted on four counts of armed robbery on July 12, 1985. He did not appeal. This Court has held that if one convicted of a crime takes no

action to perfect his right to appeal, the statute of limitations for filing an application for post-conviction relief begins to run from the date of the final conviction. Warren v. State, 833 S.W.2d 101 (Tenn. Crim. App. 1992). His present post-conviction petition is barred by the statute of limitations. Tenn. Code Ann. § 40-30-202 (1996 Supp.) The judgment of the trial court is affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

JOHN K. BYERS, Senior Judge