

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1996 SESSION

FILED

February 20, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

ROY BARNETT,)
)
 Appellant)
)
 V.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)
)
)

No. 03C01-9512-CV-00394

HAMBLEN COUNTY

HON. JAMES E. BECKNER,
JUDGE

(Post-Conviction)

For the Appellant:

Roy Barnett #111627
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For the Appellee:

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OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

William M. Barker, Judge

OPINION

The appellant, Roy Barnett, appeals as of right the summary dismissal of his post-conviction petition by the Hamblen County Criminal Court. Appellant is currently serving three (3) concurrent thirty-five (35) year sentences as a result of his 1986 convictions for three (3) counts of aggravated sexual battery. The convictions were affirmed by this Court in 1987. See State v. Roy Barnett, No. 240 (Tenn. Crim. App. at Knoxville, July 8, 1987). He filed this post-conviction petition, *pro se*, on September 29, 1995 alleging ineffective assistance of counsel, prosecutorial misconduct and improper action taken by the trial judge. This is appellant's first petition for post-conviction relief. The trial court summarily dismissed the petition, without an evidentiary hearing, ruling that it was barred by the statute of limitations.

Appellant's post-conviction petition is governed by the now-repealed Post-Conviction Procedure Act. Tenn. Code Ann. §§40-30-101 - 124 (repealed 1995). That Act imposed a three year statute of limitations on post-conviction petitions. Tenn. Code Ann. §40-30-102 (repealed 1995). That statute provided that the limitations period begins running from the date of the final action of the highest state appellate court to which an appeal is taken. Id. This Court affirmed appellant's convictions on July 8, 1987 and no further appeals were taken. The three year period expired on appellant's post-conviction claims on July 8, 1990. Therefore, this petition filed in 1995, some five years after expiration of the statute, is clearly time-barred.¹ The trial court did not err in dismissing the appellant's petition.

Any contention by the appellant that the new Post-Conviction Procedure Act, effective May 10, 1995, provided him with a one-year window of opportunity within which to file his post-conviction petition is meritless. Similar attempts to circumvent

¹Appellant asserts that the statute was tolled based on the discovery of new scientific evidence. Tenn. Code Ann. §40-30-202(b)(2) (Supp. 1995). However, this provision of the 1995 Post-Conviction Procedure Act is not applicable to appellant's petition. His petition is governed by the repealed act which contained no similar provision.

the statute of limitations in this manner have been previously rejected by panels of this Court. See Stephen Koprowski v. State, No. 03C01-9511-CC-00365 (Tenn. Crim. App. at Knoxville, January 28, 1997) and Johnny L. Butler v. State, No. 02C01-9509-CR-00289 (Tenn. Crim. App. at Jackson, December 2, 1996). But see Arnold Carter v. State, No. 03C01-9509-CC-00270 (Tenn. Crim. App. at Knoxville, July 11, 1996), perm. to appeal pending.

Finding that no error of law was committed by the trial court and that an opinion would have no precedential value, the dismissal of appellant's post-conviction petition is affirmed pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

William M. Barker, Judge

John H. Peay, Judge

David G. Hayes, Judge