

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER SESSION, 1996

FILED
February 12, 1997
Geoff Crumpton, Jr.
Appellate Court Clerk

WILLIAM EDWARD BLAKE,)

Appellant,)

VS.)

STATE OF TENNESSEE,)

Appellee.)

C.C.A. NO. 03C01-9001-CR-0010

KNOX COUNTY

HON. RAY L. JENKINS
JUDGE

(Post-Conviction)

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

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. The Defendant filed his third petition for post-conviction relief on November 29, 1995. Shortly thereafter, the trial court summarily dismissed the petition as barred by the statute of limitations. It is from the order of dismissal that the Defendant appeals. We affirm the judgment of the trial court.

The Defendant was convicted of assault with intent to commit murder and was sentenced to life imprisonment in 1986. This Court affirmed his conviction on appeal.¹ This Court affirmed the denial of the Defendant's first petition for post-conviction relief on November 17, 1988.² This Court affirmed in part the dismissal of the Defendant's second petition for post-conviction relief and remanded in part on March 9, 1991.³ On August 17, 1993, this Court affirmed the dismissal of the second petition after the hearing on remand.⁴

On November 29, 1995, the Defendant filed his third petition for post-conviction relief. The trial judge promptly dismissed the petition as being barred by the three-year statute of limitations. It is from this order of the trial court that the Defendant appeals.

¹State v. William Edward Blake, C.C.A. No. 1105, Knox County (Tenn. Crim. App., Knoxville, Aug. 18, 1987), perm. to appeal denied (Tenn. 1987).

²William Edward Blake v. State, C.C.A. No. 1191, Knox County (Tenn. Crim. App., Knoxville, Nov. 17, 1988), perm. to appeal denied (Tenn. 1989).

³William Edward Blake v. State, C.C.A. No. 1326, Knox County (Tenn. Crim. App., Knoxville, Mar. 19, 1991).

⁴William Edward Blake v. State, C.C.A. No. 03C01-9212-CR-00444, Knox County (Tenn. Crim. App., Knoxville, Aug. 17, 1993), perm. to appeal denied (Tenn. 1994).

At the time the Defendant's convictions became final, the statute of limitations applicable to post-conviction proceedings was three years. Tenn. Code Ann. § 40-30-102 (repealed 1995). It is clear that this petition was filed more than five years after the expiration of the three-year statute of limitations. The petition alleges a violation of the Defendant's constitutional rights regarding certain jury instructions and also alleges ineffective assistance of counsel. He argues that application of the three-year statute of limitations to his claims would violate his due process rights as set forth in Burford v. State, 845 S.W.2d 204 (Tenn. 1992). The trial court found the Defendant's Burford arguments to be without merit and dismissed the petition. In the words of the learned and able Judge John K. Byers, "We find the ruling by the trial judge to be correct and decline to become bogged down in analyzing irrelevancies." Ralph D. Brock v. State, C.C.A. No. 03C01-9212-CR-00427, Sullivan County (Tenn. Crim. App., Knoxville, Aug. 23, 1993), perm. to appeal denied (Tenn. 1993).

We do acknowledge that the new Post-Conviction Procedure Act is applicable to this petition and all petitions filed after May 10, 1995.⁵ This Act 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 Tenn. Code Ann. §40-30-201 (Supp. 1996) referring to Acts 1995, ch. 207, § 3. Another panel of this Court has held, with one member dissenting, that the new Post-Conviction Procedure Act provides "a one-year window" during which each and every defendant may file a petition. Arnold Carter v. State, C.C.A. No. 03C01-9509-

⁵Tenn. Code Ann. § 40-30-201 et seq. (Supp. 1996). See 1995 Tenn. Pub. Acts ch. 207, § 3.

CC-00270, Monroe County (Tenn. Crim. App., Knoxville, July 11, 1996), perm. to appeal granted (Tenn. 1996). That case holds that the one-year window is available even if the petition would have been long ago barred by the three-year statute provided under the previous act.

Another panel of this court has in two cases followed the reasoning of the dissent in Arnold Carter v. State, and held that the 1995 Act did not provide previously barred defendants with a new one-year period during which to petition for post-conviction relief. Wallace Butler v. Ricky Bell, Warden, C.C.A. No. 02C01-9510-CC-00297, Fayette County (Tenn. Crim. App., Jackson, Nov. 19, 1996); Johnny L. Butler v. State, C.C.A. No. 02C01-9509-CR-00289, Shelby County (Tenn. Crim. App., Jackson, Dec. 2, 1996,). We likewise do not believe that the 1995 Post-Conviction Act revives any previously time-barred post-conviction relief claims, and we so hold.

Furthermore, even if the Defendant was entitled to bring his petition under the 1995 Post-Conviction Procedure Act, we conclude that he is not entitled to relief. We believe that the grounds the petitioner has alleged concerning improper jury instructions or concerning ineffective assistance of counsel have either been waived because they were not presented on direct appeal or in prior post-conviction petitions or were previously determined in his direct appeal or in his prior post-conviction proceedings. Tenn. Code Ann. § 40-30-206(g), (h).

The judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

THOMAS T. WOODALL, JUDGE