

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

OCTOBER 1996 SESSION

**FILED**

**March 11, 1997**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

RONALD ALBERT BRUMMITT, \*

C.C.A. # 03C01-9512-CC-00415

Appellant, \*

LOUDON COUNTY

VS. \*

Hon. E. Eugene Eblen, Judge

STATE OF TENNESSEE, \*

(Post-Conviction)

Appellee. \*

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

AFFIRMED

DAVID H. WELLES, JUDGE

## OPINION

The petitioner, Ronald Albert Brummitt, appeals the trial court's dismissal of his petition for post-conviction relief. The single issue presented for review is whether the petition was barred by the statute of limitations.

We affirm the judgment of the trial court.

On September 14, 1995, the petitioner filed a petition for post-conviction relief in an effort to make a collateral attack upon his October 19, 1979, convictions for the possession for resale of Schedule II, III, and IV controlled substances and the possession of a Schedule VI controlled substance. The convictions were based upon guilty pleas entered by the petitioner; he now claims that the convictions were invalid for the failure of the trial court to advise him of his privilege against self-incrimination and his right to confrontation. On March 14, 1995, these Tennessee convictions had been used to enhance sentences on convictions in the United States District Court. United States v. Ronald A. Brummitt, No. CR-3-94-128 (E. D. Tenn., March 14, 1995). The petitioner claims that his 1979 guilty pleas were invalid based upon the rationale of Boykin v. Alabama, 395 U.S. 238 (1969); Rule 11, Tenn. R. Crim. P.; and State v. Mackey, 553 S.W.2d 337 (Tenn. 1977).

The petitioner argues that the statute of limitations for petitions for post-conviction relief, which would have ordinarily served as a bar, had been repealed by an amendment effective May 10, 1995:

This act shall take effect upon becoming a law, the public welfare requiring it and shall govern all petitions for post-conviction relief filed after this date, and any motions which may be filed after this date to reopen petitions for post-conviction relief which were concluded prior to the effective date of this act. Notwithstanding any other

provision of this act to the contrary, any person having a 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 or motion to reopen the petition under this act.

1995 Tenn. Pub. Act 207, § 3. The amended act provides a one-year statute of limitations. Tenn. Code Ann. § 40-30-202(a)(Supp. 1996). There are few exceptions to the new limitations period. See Tenn. Code Ann. § 40-30-202(b) (Supp. 1996).

It is well-settled law that unambiguous statutes must be construed to mean what they say. Montgomery v. Hoskins, 222 Tenn. 45, 47, 432 S.W.2d 654, 655 (1986). However, the statute in the case sub judice contains a latent ambiguity, and a reading of the statute is subject to different interpretations regarding grounds for relief recognized under the prior act. Moreover, the fundamental rule of statutory construction is to ascertain and give effect to the intention or purpose of the legislature as expressed in the statute. State v. Sliger, 846 S.W.2d 262-63 (Tenn. 1993). The legislative intent or purpose is to be as ascertained primarily from the natural and ordinary meaning of the language used without any forced or subtle construction to limit or extend the import of the language. Worrall v. Kroger Co., 545 S.W.2d 736, 738 (Tenn. 1977). However, statutes are not to be construed so strictly as to defeat the obvious intention of the legislature. State v. Netto, 486 S.W.2d 725, 728 (Tenn. 1972) (citing Southern Ry. Co. v. Sutton, 179 F. 471 (6th Cir. 1910)).

The legislative intent behind the revised Post-Conviction Procedure Act is clear: The legislature intended to limit the number of post-conviction petitions that a defendant could file and to reduce the time in which he could file them. In summarizing the proposed bill to the members of the Tennessee House of Representatives, Representative Jere Hargrove, the sponsor of the bill, explained that the legislation was written in response to constituents' concerns of the lengthy

amount of time allowed in post-conviction proceedings. He specifically stated that the purpose of the bill was to put time constraints on the "interminable duration of criminal appeals." Tennessee General Assembly, H. Tape No. 59, 99th G.A., 1st Sess. (April 19, 1995) (statement of Representative Hargrove).

In the entirety of the act, the legislature reduced the statute of limitations from three years to one year. However, Representative Hargrove expressed his concerns that the rights of defendants not be cut off by the reduction. Tennessee General Assembly, H. Judiciary Comm. Tape No. 3, 99th G.A., 1st Sess. (April 19, 1995) (statement of Representative Hargrove). The above language was added as an amendment to ensure that no one's rights were precluded. In presenting the bill to the House Judiciary Committee for a vote, he referred to the above language and stated: "This is to be abundantly clear that we are not cutting anybody's rights off under this bill."

Logic would dictate that if the entire statute was intended to limit the time and opportunity to seek post-conviction relief, this language would not then be meant to re-open the door and extend the time during which one could seek relief, even though already barred by the prior statute of limitations.

In our view, the statutory language at issue is only applicable to those petitioners who were not barred by the statute of limitations when the statute went into effect with the adoption of the new act. Thus, if less than three years had already passed at the bill's enactment, a defendant assuming he had three years in which to file a petition for post-conviction relief would not be foreclosed from bringing a suit; instead, he would still have the one year from the effective date of the statute. This approach would be in accordance with the general tenor of the entire statute as

well as its legislative history.

Accordingly, the judgment is affirmed.

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David H. Welles, Judge

CONCUR:

(See Dissenting Opinion)  
Gary R. Wade, Judge

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Jerry L. Smith, Judge

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STATE OF TENNESSEE,	*	(Post-Conviction)
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DISSENTING OPINION

As a matter of convenience, I would like to join in the opinion of the majority. As indicated in the majority opinion, however, a fundamental rule of statutory construction is to ascertain and give effect to the intention or the purpose of the legislature as expressed in the statute. When, however, a statute is unambiguous on its face, it is incumbent upon the judiciary to defer to the plain, ordinary, commonly understood meaning of the statute. See, e.g., Mercy v. Olsen, 672 S.W.2d 196 (Tenn. 1984); Thomas v. United States, 189 F.2d 494 (6th Cir. 1951). To do otherwise, in my view, abrogates our responsibility as a judiciary. We may neither force a convenient interpretation nor extend meaning to what should have been enacted. See, e.g., State v. Hinsley, 627 S.W.2d 351 (Tenn. 1982). In other words, this court may not assume that when a legislative enactment says one thing, it really means something else. See, e.g., United States v. Cardinas, 864 F.2d 1528 (10th Cir. 1989). I must, therefore, dissent based upon the holding in Arnold Carter v. State, No. 03C01-9509-CC-00270 (Tenn. Crim. App., at Knoxville, July 11, 1996), perm. to app. granted (Dec. 2, 1996).

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Gary R. Wade, Judge

