

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
FEBRUARY 1997 SESSION

FILED
March 12, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

DENNIS DUNNING,)
)
Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
Appellee.)

C.C.A. NO. 02C01-9603-CR-00102
SHELBY COUNTY
HON. JOHN P. COLTON, JR.,
JUDGE
(Post-conviction)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED- RULE 20

JOHN H. PEAY,
Judge

OPINION

The petitioner appeals from the trial court's dismissal of his petition for post-conviction relief. In this appeal as of right, the petitioner contends that the trial court erred in dismissing his petition. We disagree and affirm the action of the trial court.

The petitioner argues that the trial court erred when it dismissed his petition because it was not filed within the statute of limitations. In 1986, the petitioner pled guilty to one count of possession of cocaine with intent to distribute and two counts of selling a controlled substance. In July 1995, the petitioner filed a pro se petition and counsel was appointed. The petitioner alleged that he had not been properly apprised of his rights at the time he entered his guilty plea. In January 1996, the court dismissed his petition because it was filed after the three year period of limitations.

The petitioner argues that the 1995 Post-Conviction Procedure Act allows him an additional year within which he may file a petition. The 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 T.C.A. § 40-30-201 (1996 Supp.) referring to Acts 1995, ch. 207, § 3. This Court has recently held that this language does not apply to those petitioners who are already barred by the three year statute of limitations that was in effect prior to the new act. See Johnny L. Butler v. State, No. 02C01-9509-CR-00289, Shelby County (Tenn. Crim. App. filed December 2, 1996, at Jackson), and Wallace Butler v. Ricky Bell, Warden, 02C01-9510-CC-00297, Fayette County (Tenn. Crim. App. filed November 19,

1996, at Jackson).¹ This petitioner pled guilty in 1986 yet he did not file his post-conviction petition until 1995. He is clearly barred by the three year statute of limitations.

Therefore, we conclude that this case is appropriate for affirmance under Rule 20 of the Court of Criminal Appeals.

JOHN H. PEAY, Judge

CONCUR:

JOE B. JONES, Judge

JOE G. RILEY, Judge

¹We do note that one panel of this Court has held, with one member dissenting, that the new Post-Conviction Procedure Act provides a “one-year window” in which every defendant may file a petition. See Arnold Carter v. State, No. 03C01-9509-CC-00270, Monroe County (Tenn. Crim. App. filed July 11, 1996, at Knoxville), cert. granted, Dec. 2, 1996.