

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1996 SESSION

FILED

February 12, 1997

Cecil W. Crowson
Appellate Court Clerk

ERIC C. PENDLETON,

Appellant,

vs.

STATE OF TENNESSEE

Appellee.

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No. 01-C-01-9604-CR-00158

DAVIDSON COUNTY

Hon. Ann Lacy Johns, Judge

(Petition for Writ of
Habeas Corpus)

For the Appellant:

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OPINION FILED: _____

AFFIRMED

JOE G. RILEY
JUDGE

OPINION

The petitioner, Eric C. Pendleton, appeals the order of the Criminal Court of Davidson County dismissing his petition for a writ of habeas corpus. He was sentenced in July 1987 to serve a life sentence plus six (6) years for first degree murder and aggravated assault. Because the trial court found that the petitioner was in the lawful custody of the Tennessee Department of Correction, the court dismissed the writ without a hearing. The trial court also treated the petition as one for post-conviction relief and found it was time-barred by the three-year statute of limitations. We affirm.

I.

The petitioner's argument is that the statutory scheme of sentencing violates the separation of powers clause of the State Constitution. See T.C.A. §§ 40-35-211 and 40-35-501. He claims that the judicial branch by determining the range of punishment which establishes the minimum time to be served before parole eligibility impermissibly infringes upon the executive branch's duty to calculate release eligibility, good time and other credits. He also contends the parole board unlawfully exercises a judicial function by granting or denying parole. These arguments are without merit. Furthermore, habeas corpus relief in criminal cases is limited to those instances where the petitioner's conviction is void or he is being held beyond the expiration of his sentence. Archer v. State, 851 S.W.2d 157 (Tenn. 1993).

Regardless, petitioner's claim that certain statutes are unconstitutional does not render the judgment void, but merely raises the possibility of a *voidable* judgment. A petitioner is only entitled to habeas corpus relief when "'it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered' that a convicting court was without jurisdiction or authority to sentence a defendant, . . ." or that the prisoner's sentence has expired. Archer v. State, 851 S.W.2d at 164. There is nothing on the face of the records or the pleadings to indicate that the criminal court lacked jurisdiction or authority to

sentence the petitioner. Nor is there any indication that the sentence has expired.

Although the petitioner raises constitutional issues, he cannot establish that the judgments convicting him are void or that his sentence terms have expired. Therefore, we find that the petition for a writ of habeas corpus was properly dismissed.

II.

The trial judge pointed out that the petition should have been one for post-conviction relief. However, the petition was dismissed on these grounds because of the three-year statute of limitations for post-conviction relief under T.C.A. § 40-30-102 (repealed by 1995 Tenn. Pub. Act 207, § 1). Petitioner's convictions were affirmed on September 28, 1988, and the Tennessee Supreme Court denied permission to appeal on December 27, 1988. The petition for a writ of habeas corpus was filed on August 3, 1995.

The new Post-Conviction Procedure Act, T.C.A. § 40-30-201 et. seq. (Supp. 1996), reduced the statute of limitations for post-conviction relief to one (1) year. The Act also provides for a one (1) year grace period from May 10, 1995, to file a petition or reopen a petition for post-conviction relief. The grace period does not apply in this instance because post-conviction relief was already barred by the statute of limitations when the legislation was enacted. The new Post-Conviction Procedure Act was not meant to revive previously barred claims. See Johnny L. Butler v. State, C.C.A. No. 02C01-9509-CR-00289 (Tenn. Crim. App. filed December 2, 1996, at Jackson); *but see* Arnold Carter v. State, C.C.A. No. 03C01-9509-CC-00270, Monroe County (Tenn. Crim. App. filed July 11, 1996, at Knoxville). As a result, any post-conviction relief is time-barred and we agree that the petition should have been dismissed on this basis.

III.

Accordingly, we conclude that the petitioner's claims do not show that his judgment is void or that his sentence has expired, making habeas corpus relief inappropriate. Furthermore, a petition for post-conviction relief is untimely. The judgment is affirmed.

JOE G. RILEY, JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

WILLIAM M. BARKER, JUDGE