

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1996 SESSION

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

JOHNNY TILLMAN,)
)
 Appellant)
)
 V.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)
)
)
)

No. 03C01-9512-CR-00413

KNOX COUNTY

HON. RAY L. JENKINS,
JUDGE

(Post-Conviction)

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OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

OPINION

The appellant, Johnny Tillman, appeals the dismissal of his post-conviction petition filed in the Criminal Court of Knox County. The trial court summarily dismissed appellant's petition because it was filed outside the applicable statute of limitations. Finding no error in the trial court's ruling, we affirm the dismissal of the petition.

Appellant's only issue on appeal is whether his petition is time-barred by the statute of limitations. A brief procedural history is necessary to evaluate his claim.

Appellant was convicted by a jury in 1977 for rape and sentenced to seventy-five (75) years. He began serving his sentence on August 20, 1977. On direct appeal, this Court affirmed his conviction in 1978. The current petition, his first for post-conviction relief, was filed on August 11, 1995 and alleged ineffective assistance of counsel and violations of due process. The trial court summarily dismissed the petition as barred by the statute of limitations.

Under the mandate of the now-repealed Post-Conviction Procedure Act, the statute of limitation applicable to appellant's post-conviction claims was three years. Tenn. Code Ann. §40-30-102 (repealed 1995). That three year period began running on July 1, 1986, the effective date of the statute, and the last date on which appellant could have filed such a petition was July 1, 1989. See e.g. State v. Mullins, 767 S.W.2d 668, 669 (Tenn. Crim. App. 1988); Smith v. State, 757 S.W.2d 683, 685 (Tenn. Crim. App. 1988); State v. Masucci, 754 S.W.2d 90, 91 (Tenn. Crim. App. 1988); and Abston v. State, 749 S.W.2d 487, 488 (Tenn. Crim. App. 1988). Appellant's current petition was filed in August of 1995, some six years after the statute had expired. Therefore, the trial court properly dismissed appellant's petition.

In contesting this conclusion, appellant relies upon an earlier opinion from a panel of this Court construing the new Post-Conviction Procedure Act, which became effective May 10, 1995. See Arnold Carter v. State, No. 03C01-9509-CC-00270

(Tenn. Crim. App. at Knoxville, July 11, 1996), perm. to appeal pending. That opinion reaches a different result when construing the statute of limitations applicable to certain post-conviction petitions filed between May 10, 1995 and May 10, 1996. In Carter, the final action taken by an appellate court on the petitioner's convictions occurred in 1985 and the statute of limitations began running on that date. Slip op. at 2. The post-conviction petition at issue there was filed in July of 1995. Id. The petition, filed ten (10) years after the petitioner's final appeal, appeared to have been filed outside the applicable statute of limitations. However, a panel of this Court held that it was not time-barred. Slip op. at 4. In reaching that result, certain language found in an uncodified portion of the 1995 Act was held to be dispositive of the limitations question. Id. That language states: "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 a motion to reopen under this act." 1995 Tenn. Pub. Act 207, §3. According to the majority of the panel, this language meant that a petitioner whose claims had already expired now had a new one year period within which to file a post-conviction petition. Carter, slip op. at 4. In essence, the holding allowed any petition filed within one year of May 10, 1995 to be timely filed, regardless of the date of conviction.

Judge David Welles filed a strong dissenting opinion stating his belief that the holding was contrary to the legislature's intent. Although the author of this opinion was a member of the majority in the Carter opinion, upon further reflection of the issues considered therein, the better-reasoned opinion is that of Judge Welles. In construing that controversial provision, we adopt the following language from Judge Welles' dissenting opinion:

"[T]his language is only applicable to those who were not barred by the statute of limitations at the time this statute went into effect. Thus, if less than three years had already passed at the bill's enactment, a defendant assuming that 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."

Arnold Carter v. State, No. 03C01-9509-CC-00270 (Tenn. Crim. App. at Knoxville, July 11, 1996), perm. to appeal pending. Construing the new act to provide that all post-conviction petitioners had a new one (1) year period within which to file claims is unreasonable and contrary to the legislature's intent.

We believe Judge Welles' reasoning more closely interprets the intention of the legislature when it enacted this language. The controversial provision contains the phrase "*any person having a ground for relief recognized under this act . . .*" 1995 Tenn. Pub. Act 207, §3 (emphasis added). In order for persons to have a ground for relief under the Act, we believe they must initially fall within the statutory parameters of Tennessee Code Annotated section 40-30-202. Therefore, a person has a "ground for relief" recognized under the act only if:

(a) he alleges a constitutional violation any time within one (1) year of the date of the final action taken on his conviction. See Tenn. Code Ann. §40-30-202(a) (Supp. 1995); or

(b) he has a claim falling within the purview of Burford v. State, 845 S.W.2d 204 (Tenn. 1992). The legislature provided exception to the statute of limitations in such cases. See Tenn. Code Ann. §40-30-202(b)(1) and (b)(3); or

(c) the claim is based upon new scientific evidence establishing his innocence. Tenn. Code Ann. §40-30-202(b)(2) (Supp. 1995); or

(d) the three-year period had not expired when the new act became effective on May 10, 1995 (the circumstances outlined by Judge Welles in the above-quoted language).

Without the presence of these circumstances, a petitioner does not have a ground for relief recognized by the Act. Since appellant does not fall within any of those provisions, his claim is barred by the statute of limitations.¹

To construe the provision otherwise, in effect, would breathe new life into an extinguished claim. Appellant's case is an apt example. When appellant filed his

¹Appellant admitted in his brief that none of the circumstances outlined in Tennessee Code Annotated section 40-30-202(b) were applicable to his petition. As such, we have not analyzed the application of these exceptions to appellant's case. Further, we find meritless appellant's claims that he is entitled to a reasonable time to file his petition under the rationale in Burford v. State, 845 S.W.2d 204 (Tenn. 1992).

post-conviction petition under the new Act, the statute of limitations had already expired. All claims for post-conviction relief that he may have raised were extinguished from that point forward. He could no longer pursue a violation of his constitutional rights arising from these convictions because the statute of limitations terminated his remedy for the injury. It logically follows then that appellant no longer had a “ground for relief” that was recognized under the new Act. Prior law had terminated his right to a remedy so he was no longer entitled to any form of relief. To follow the rationale in Carter and hold that appellant had one year from May 10, 1995 to file a petition for post-conviction relief would revive an extinguished claim. In our opinion, the legislature had no such intent.

Accordingly, the judgment of the Knox County Criminal Court dismissing appellant’s petition is affirmed.

William M. Barker, Judge

John H. Peay, Judge

David G. Hayes, Judge