

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY 1997 SESSION

**FILED**

**May 16, 1997**

**Cecil W. Crowson  
Appellate Court Clerk**

LESLIE L. COLEMAN,

\*

C.C.A. # 01C01-9605-CR-00205

Appellant,

\*

DAVIDSON COUNTY

VS.

\*

Hon. J. Randall Wyatt, Jr., Judge

STATE OF TENNESSEE,

\*

(Post-Conviction)

Appellee.

\*

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

AFFIRMED

PER CURIAM

## OPINION

The petitioner, Leslie L. Coleman, appeals the trial court's denial of his petition for post-conviction relief. The issue presented for review is whether the trial court correctly dismissed the petition without an evidentiary hearing on the basis that it was barred by the statute of limitations. We affirm the judgment of the trial court.

On October 17, 1991, the petitioner pled guilty to felony murder and especially aggravated robbery; the trial court imposed a life sentence for the murder and fifteen years for the robbery, to be served concurrently. No direct appeal was taken. On October 1, 1992, the petitioner filed a petition for post-conviction relief; but on November 25, 1992, counsel for the petitioner voluntarily withdrew that petition prior to a hearing on the merits. The present petition was filed on August 15, 1995, alleging ineffective assistance of both trial counsel and the first post-conviction counsel. The trial judge dismissed the petition as being barred by the statute of limitations.

We must determine whether the statute of limitations is a bar. Effective May 10, 1995, the new Post-Conviction Procedure Act replaced the prior act in its entirety. See 1995 Tenn. Pub. Act 207, §§ 1 and 3. Because this petition was filed in August of 1995, the most recent legislation replaced a three-year with a one-year limitation:

(a) ...[A] person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of such petition shall be barred. The statute of limitations shall not be tolled for any reason....

(b) No court shall have jurisdiction to consider a petition filed after such time unless:

(1) The claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. Such petition must be filed within one (1) year of the ruling of the highest state appellate court or the United States [S]upreme [C]ourt establishing a constitutional right that was not recognized as existing at the time of trial;

(2) The claim in the petition is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the petition must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid.

Tenn. Code Ann. § 40-30-202 (Supp. 1996).

Because the conviction in this case became final in 1991, this petition appears to have been barred not only by the current one-year statute of limitations but also the former three-year statute. Moreover, the grounds raised do not appear to fall within any of the exceptions set out in Tenn. Code Ann. § 40-30-202(b)(1), (2), or (3)(Supp. 1996).

That petitioner may have received ineffective assistance of counsel by dismissing his first post-conviction petition does not create an exception to the statute of limitations. Our court has held "ignorance of the existence of the statute of limitations, even when alleged to stem from an attorney's negligent failure to render advice to the petitioner, does not toll the running of the statute of limitations." State v. Phillips, 904 S.W.2d 123, 124 (Tenn. Crim. App. 1995). The fact that an attorney advised against filing a post-conviction petition does not toll the statute of

limitations. Id; see also House v. State, 911 S.W.2d 705, 712 (Tenn. 1995) ("a court should not consider the ineffectiveness of counsel at a prior post-conviction proceeding in deciding whether a ground for relief has been previously determined.").

The petitioner argues in his brief that the 1995 Act creates a new one-year filing period for those "defendants who were incarcerated on May 10, 1995."

He bases his argument on the following portion of the 1995 Act:

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 a motion to reopen under this act.

1995 Tenn. Pub. Act 207, § 3 (emphasis added).

In Arnold Carter v. State, No. 03C01-9509-CC-00270 (Tenn. Crim. App., at Knoxville, July 11, 1996), appeal granted, (Tenn., Dec. 2, 1996), a panel of this court, by a two-to-one margin, ruled that the literal terms of the new statute created a one-year window during which post-conviction petitions may be filed, notwithstanding the date of the judgment. This majority found no ambiguities in the terminology of the statute despite the reasonable argument by the dissent to the contrary. In Carter, our supreme court granted the state's application for permission to appeal. While no decision has yet been filed, other panels of this court have adopted the dissenting view in Carter. See, e.g., Ronald Albert Brummitt v. State, No. 03C01-9512-CC-00415 (Tenn. Crim. App., at Knoxville, March 11, 1997); Jimmy Earl Lofton v. State, No. 02C01-9603-CR-00073 (Tenn. Crim. App., at Jackson, March 7, 1997); Roy Barnett v. State, No. 03C01-9512-CV-00394 (Tenn. Crim.

App., at Knoxville, Feb. 20, 1997); Stephen Koprowski v. State, No. 03C01-9511-CC-00365 (Tenn. Crim. App., at Knoxville, Jan. 28, 1997); Johnny L. Butler v. State, No. 02C01-9509-CR-00289 (Tenn. Crim. App., at Jackson, Dec. 2, 1996). A majority of this panel now adheres to the holding in these subsequent cases. Thus, this claim is barred by the statute of limitations.

The judgment is affirmed.

PER CURIAM

Gary R. Wade, Judge  
David G. Hayes, Judge  
Curwood Witt, Judge