

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MARCH 1997 SESSION

**FILED**  
May 1, 1997  
Cecil Crowson, Jr.  
Appellate Court Clerk

RICKY W. MCELHANEY,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

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C.C.A. NO. 03C01-9603-CR-00097

HAMILTON COUNTY

HON. STEPHEN M. BEVIL,  
JUDGE

(Post-conviction)

FOR THE APPELLANT:

FOR THE APPELLEE:

RICKY W. MCELHANEY, pro se  
MCRCF  
Wartburg TN 37887

JOHN KNOX WALKUP  
Attorney General & Reporter

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Asst. Attorney General  
450 James Robertson Pkwy.  
Nashville, TN 37243-0493

WILLIAM H. COX III  
District Attorney General

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

**AFFIRMED**

JOHN H. PEAY,  
Judge

## OPINION

On December 14, 1995, the petitioner filed his "Application for Post-Conviction Relief Amended Petition" in Hamilton County, Tennessee.<sup>1</sup> In this petition, he attacks a 1979 conviction rendered in Davidson County, Tennessee. The court below entered a preliminary order of dismissal on the grounds that the petition was filed in the wrong county. The petitioner appeals therefrom. We affirm the court below.

As correctly noted by the court below, petitions for post-conviction relief must be filed in the county in which the conviction occurred. T.C.A. § 40-30-204(a). The petitioner's petition was therefore properly dismissed summarily. This issue has no merit.

The judgment below is affirmed.

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JOHN H. PEAY, Judge

CONCUR:

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PAUL G. SUMMERS, Judge

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CORNELIA A. CLARK, Special Judge

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<sup>1</sup>Apparently, the petitioner initially filed or attempted to file his petition in Davidson County. In response thereto, the Davidson County District Attorney General wrote a letter to the petitioner stating, "Enclosed please find the copy of your Petition for Post Conviction Relief. This matter should be filed with the Criminal Court Clerk of Hamilton County, Tennessee where your conviction originated." In filing his petition in Hamilton County, the petitioner was apparently following this legal advice given to him by the State, which the State now concedes was incorrect. We question the practice of the District Attorney General giving legal advice to his adversaries. Furthermore, it is the trial court's responsibility to determine whether post-conviction petitions are filed in accordance with statutory requirements. See T.C.A. § 40-30-206(a) and (b).