

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL 1997 SESSION

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

STATE OF TENNESSEE,)
)
 Appellee,)
)
 VS.)
)
 SHADE T. UNDERWOOD, JR.,)
)
 Appellant.)

C.C.A. No. 03C01-9607-CR-00274

MORGAN COUNTY

HON. E. EUGENE EBLEN,
JUDGE

(Post Conviction)

FOR THE APPELLANT:

SHADE T. UNDERWOOD, JR.
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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

**JOE G. RILEY,
JUDGE**

OPINION

Pro se petitioner, Shade T. Underwood Jr., appeals the trial court's denial of post-conviction relief. In 1981, petitioner was convicted of murder and sentenced to 99 years. Petitioner attacks the legality of his sentence claiming that he could only have received a life sentence in 1981. Dismissing the petition without an evidentiary hearing, the trial court ruled the defendant's claim was time-barred. We affirm the judgment of the trial court.

STATUTE OF LIMITATIONS

Petitioner argues that he is entitled to a post-conviction hearing because he was not informed nor "placed on notice" of the three-year statute of limitations for filing post-conviction petitions. Petitioner's original conviction and sentence were affirmed by this Court on January 23, 1984. State v. Underwood, 669 S.W.2d 700 (Tenn. Crim. App. 1984). In 1984, petitioner filed his first petition for post conviction relief. It was subsequently denied by the trial court and affirmed by this Court. Underwood v. Livesay, 721 S.W.2d 824 (Tenn. Crim. App. 1986). The statute of limitations expired July 1, 1989. See Abston v. State, 749 S.W.2d 487 (Tenn. Crim. App. 1988). Ignorance of the existence of the statute of limitations does not toll the running of the statute. Brown v. State, 928 S.W.2d 453 (Tenn. Crim. App. 1996); State v. Phillips, 904 S.W.2d 123,124 (Tenn. Crim. App. 1995). Any relief has been barred by the three-year statute of limitations for post-conviction relief under Tenn. Code Ann. § 40-30-102 (repealed by 1995 Tenn. Pub. Act 207, § 1). Accordingly, the petition was properly dismissed.

We should also note that under the new Post-Conviction Procedure Act, Tenn. Code Ann. § 40-30-201 et. seq. (Supp. 1996), the statute of limitations for post-conviction relief is reduced 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 Eric C. Pendleton v. State, C.C.A. No. 01C01-9604-CR-00158, Davidson County (Tenn. Crim. App. filed February 12, 1997, at Nashville); Johnny L. Butler v. State, C.C.A. No. 02C01-9509-CR-00289, Shelby County (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.

WAIVER

Even if timely filed, this issue was previously determined on direct appeal. Underwood, 669 S.W.2d at 705; Tenn. Code Ann. §40-30-206 (h) (Supp. 1996). Furthermore, the issue has been waived by the failure to raise it for determination in the prior post conviction proceeding. Tenn. Code Ann. §40-30-206 (g) (Supp. 1996).

The judgment of the trial court is AFFIRMED.

JOE G. RILEY, JUDGE

CONCUR:

JERRY L. SMITH, JUDGE

CHRIS CRAFT, SPECIAL JUDGE