

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
APRIL SESSION, 1997

VIRGIL L. HENDERSON,)
)
Appellant)
)
vs.)
)
STATE OF TENNESSEE)
)
Appellee)

No. 02C01-9606-CC-00193

HARDEMAN COUNTY

Hon. **Jon Kerry Blackwood**, Judge

(Post-Conviction)

FILED

September 12, 1997

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Appellate Court Clerk

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Virgil L. Henderson, appeals the order of the Hardeman County Circuit Court dismissing his *pro se* petition for post-conviction relief. In this appeal, the appellant raises four issues which collectively can be summarized as challenging the trial court's ruling that the petition for post-conviction relief is time-barred.

On January 4, 1991, the appellant pled guilty in the Hardeman County Circuit Court to three counts of theft of property over \$10,000, class C felonies. Pursuant to federal sentencing guidelines, these state convictions were used to enhance the appellant's sentence resulting from a subsequent federal conviction.¹ Presently, the appellant is incarcerated at the Federal Correctional Institution in Memphis, Tennessee. On May 3, 1996, the appellant filed a *pro se* petition for post-conviction relief alleging that his 1991 Hardeman County guilty pleas were not knowingly and voluntarily entered.² On May 14, 1996, the trial court dismissed the petition as being barred by the statute of limitations.

The appellant presents two arguments to support his claim that the trial court erred in dismissing his petition as being time-barred. First, he contends that, due to his confinement in the federal correction facility, he was "without access to the Tennessee Code Annotated," therefore, he was unaware of the three year limitation period. Lack of knowledge does not excuse late filings. Skinner v. State, No. 02C01-9403-CC-00039, (Tenn. Crim. App. at Jackson, July 13, 1994); (citing Willis v. State, No. 01C01-9211-CR-00359, (Tenn. Crim. App.

¹In accordance with Federal Sentencing Guidelines, the appellant received two criminal history points for the three Hardeman County felony convictions, resulting in an enhanced federal sentence. 28 U.S.C.A. § 994(a)(1) (West 1993); Federal Sentencing Guidelines §§ 4A1.2(1995).

²The appellant alleges that his guilty pleas failed to comply with the requirements of Rule 11, Tenn. R. Crim. P. and the constitutional mandates of Boykin v. Alabama, 395 U.S. 238 (1969).

at Nashville, Oct. 21, 1993). This issue is without merit.

Second, the appellant contends that the new Post-Conviction Procedure Act (effective May 10, 1995) grants an additional one year period, until May 10, 1996, to file a post-conviction petition. The appellant's petition was filed on May 3, 1996. Tenn. Code Ann. § 40-30-102 (1990) (repealed 1995) limited the filing of post-conviction petitions to "within three years of the date of the final action of the highest state appellate court to which an appeal is taken." See also Burford v. State, 845 S.W.2d 204 (Tenn. 1992). Because no direct appeal was taken, the judgments, in the instant case, became final thirty days after the entry of the appellant's guilty pleas. Thus, under the three year statute of limitation, the appellant had until February 4, 1994, to file a petition for post-conviction relief. As the petition was not filed until May 3, 1996, the trial court correctly dismissed the petition as being time-barred.

We recognize that one panel of this court has held that the new Post-Conviction Procedure Act creates a one-year window within which persons with previously time-barred petitions may seek relief. Carter v. State, No. 03C01-9509-CC-00270, (Tenn. Crim. App. at Knoxville, July 11, 1996) (Welles, J., dissenting), perm. app. granted, (Tenn. Dec. 2, 1996). However, the almost unanimous position of this court, since Carter, has been that the new act does not revive previously time-barred post-conviction relief claims. See, e.g., Wolfenbarger v. State, No. 03C01-9603-CC-00124 (Tenn. Crim. App. at Knoxville, Apr. 1, 1997); Carter v. State, No. 01C01-9511-CC-00398 (Tenn. Crim. App. at Nashville, Feb. 13, 1997); Pendleton v. State, No. 01C01-9604-CR-00158 (Tenn. Crim. App. at Nashville, Feb. 13, 1997); Blake v. State, No. 03C01-9603-CR-00110 (Tenn. Crim. App. at Knoxville, Feb. 12, 1997); Koprowski v. State, No. 03C01-9511-CC-00365 (Tenn. Crim. App. at Knoxville, Jan. 28, 1997).

The clear intent of our legislature in enacting the amended act was to put an end to multiple post-conviction appeals and to limit the time in which a single petition must be filed. Therefore, we affirm the judgment of the post-conviction court and hold that the petition for post-conviction relief filed by appellant is barred by the applicable statute of limitations.

DAVID G. HAYES, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

WILLIAM M. BARKER, Judge