

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MAY SESSION, 1997

FILED
December 3, 1997
Cecil W. Crowson
Appellate Court Clerk

JAMES A. BROWN, JR.,)

Appellant,)

VS.)

STATE OF TENNESSEE,)

Appellee.)

C.C.A. NO. 01C01-9006-CC-00232

DICKSON COUNTY

**HON. ROBERT E. BURCH, JUDGE
and LEONARD W. MARTIN, JUDGE**

(Post Conviction - Sentencing)

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OPINION FILED _____

AFFIRMED PURSUANT TO RULE 20

JERRY L. SMITH, JUDGE

OPINION

In this appeal of the summary dismissal of his post-conviction petition Appellant, James A. Brown, Jr., asks this Court to review the validity of his conviction entered upon his pleas of guilty on February 20, 1991. Appellant pleaded guilty to nine (9) counts of felony theft and one (1) count of misdemeanor theft. As part of the plea agreement Appellant received sentences totaling 32 years with eight years to be served in community corrections and the balance on probation. Appellant apparently performed in a satisfactory manner while on community corrections and he was placed on probation sooner than expected. However, on June 19, 1995, Appellant's probation was revoked and he was placed in the Department of Correction.

Although acknowledging his post-conviction petition was time-barred under the three year statute of limitations in effect when his conviction became final, Appellant argues that the enactment on May 10, 1995, of the new one year statute of limitations for post-conviction petitions creates a new one year period in which he may file for post-conviction relief. Our State Supreme Court has only recently resolved this issue adversely to Appellant's position. Carter v. State, Monroe Co., No. 03-S-01-9612-CR-00117 (Tenn. S. Ct. September 8, 1997, at Knoxville). Thus the petition for post-conviction relief was properly dismissed.

In addition, following the revocation of his probation on June 10, 1995, Appellant moved the trial court pursuant to Tenn. R. Crim. P. 35 to reduce his sentence. Appellant offered no evidence as to why his agreed to sentence should be reduced, he merely stated he felt it was too harsh. The motion for

sentence reduction was denied. Under the circumstances we see no reason to disturb this discretionary decision of the trial judge.

Accordingly, the judgment of the trial court is affirmed in all respects pursuant to Rule 20, Rules of the Court of Criminal Appeals.

JERRY L. SMITH, JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

DAVID G. HAYES, JUDGE