

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JULY SESSION, 1997

**FILED**  
October 8, 1997  
Cecil C. Brown, Jr.  
Appellate Court Clerk

**KENNETH EUGENE  
GOODMAN,**

Appellant,

**VS.**

**STATE OF TENNESSEE,**

Appellee.

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**C.C.A. NO. 03C01-9008-CR-00291**

**HAMILTON COUNTY**

**HON. DOUGLAS A. MEYER  
JUDGE**

(Post-Conviction)

**ON APPEAL FROM THE JUDGMENT OF THE  
CRIMINAL COURT OF HAMILTON COUNTY**

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

AFFIRMED

DAVID H. WELLES, JUDGE

# OPINION

The Petitioner, Kenneth Eugene Goodman, appeals as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure from the trial court's denial of his petition for post-conviction relief. The Petitioner filed a pro se "petition for a writ of error coram nobis / motion to vacate judgment" on November 16, 1995. The trial court considered the petition both as one for a writ of error coram nobis and as one for post-conviction relief. On November 27, 1995, the trial court dismissed the petition without conducting an evidentiary hearing, finding that it was barred by the statute of limitations.<sup>1</sup> We affirm the judgment of the trial court.

We begin with a summary of the history of the case sub judice. The record in this case is sparse and consists mainly of the original pro se petition and the trial court's order denying that petition. As a result, the facts recited in this opinion come principally from information contained in the pro se petition. The Petitioner pleaded guilty to nine counts of armed robbery on December 6, 1978.<sup>2</sup> He was sentenced to ten years imprisonment on each count with the sentences to run concurrently. The convictions resulted from the robbery of several patrons of a Pizza Hut restaurant in Chattanooga, Tennessee. There is nothing in the record concerning the circumstances of the offenses.

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<sup>1</sup> See Tenn. Code Ann. § 27-7-103 (1980); Tenn. Code Ann. §§ 40-30-202, -206(b) (Supp. 1996).

<sup>2</sup> The trial court's order denying the post-conviction petition indicates that the Petitioner pleaded guilty to armed robbery in cases numbered 136995, 136997, 136999, 137001, 137003, 137005, 137007, 137009, and 137011. The pleas were entered in the Criminal Court of Hamilton County, which was at that time the Sixth Judicial District of Tennessee.

It appears that the Petitioner had been convicted of a criminal offense in Kansas shortly before he pleaded guilty to the armed robberies in Tennessee. As a result, after his conviction and sentencing in Tennessee, he was returned to Kansas to serve the sentence of that jurisdiction. According to the petition for post-conviction relief, his Tennessee sentences were ordered to run concurrent with the Kansas sentence. The Petitioner was paroled by Kansas and released to the custody of Tennessee on March 19, 1982. He was paroled by Tennessee on February 29, 1984. On October 20, 1984, he was released from his Tennessee parole.

On January 7, 1992, the Petitioner was arrested in San Diego, California on a charge of armed robbery. He was subsequently convicted by a jury of armed robbery and of being an habitual criminal. According to the petition, his prior Tennessee convictions were used to form the basis for his habitual criminal charge in California. This circumstance led to the Petitioner's current complaint and request for post-conviction relief.

According to the Petitioner, when he pleaded guilty to the nine counts of armed robbery in Tennessee, it was agreed that the convictions could not be used against him in the future. The petition explains that "it became a major concern of the petitioner' [sic] that if he were to go to trial without more substantial evidence to prove the existence of his alibi, coupled with his perception of counsel's ability and demeanor, it was quite possible that he may be convicted of crimes that he did not perpetrate." As a result, he entered into plea negotiations with the district attorney general's office. In discussing possible plea agreements, the Petitioner had three main concerns. The first was that he

be allowed to return to Kansas to serve his sentence in the jurisdiction close to his family and friends. The second was that his Tennessee sentence run concurrent with the Kansas sentence he was already serving so that he would not have to serve much additional time. His third and principal concern was “his status as a [sic] habitual offender based on pleading guilty to the robberies, if he were ever to get into trouble again.” The Petitioner decided that if these conditions were met, then “he would plead no contest and allow the prosecutor to ‘clear his books.’”

The petition goes on to state that after meeting with the prosecutor, defense counsel informed the Petitioner that his terms for pleading guilty had been met. Defense counsel allegedly told the Petitioner that “when the judge asked if there were any promises made to induce the plea, the petitioner must answer no or the judge could not accept the plea. Petitioner went before Honorable Judge Campbell Carden that afternoon and did as he had been instructed by counsel, entering his plea.” According to the Petitioner, it was his understanding that the terms of the plea agreement dictated that his Tennessee convictions could not be used against him in the future.

Thus, when his Tennessee armed robbery convictions were used to form the basis for his California habitual criminal conviction, the Petitioner complained to the California Court of Appeals that doing so violated the terms of his Tennessee plea agreement. According to the Petitioner, the California Court of Appeals declined to reach the merits of his argument, holding instead that any challenge to the Tennessee plea agreement must be pursued in Tennessee.

Accordingly, the Petitioner filed his “petition for a writ of error coram nobis / motion to vacate judgment” in Tennessee on November 16, 1995.

The trial court dismissed the petition without appointing counsel and without conducting an evidentiary hearing, finding that the petition was barred by the statute of limitations. Considering the petition as one for a writ of error coram nobis, the trial court found that it was time-barred because it had been filed more than one year after the judgments had become final. See Tenn. Code Ann. § 27-7-103. Considering the petition as one for post-conviction relief, the trial court found that it was barred by the previous three-year statute of limitations. See Tenn. Code Ann. § 40-30-102 (repealed 1995). It is from the trial court’s order of dismissal that the Petitioner now appeals.

Initially we note that, on appeal, the Petitioner does not challenge the trial court’s ruling with regard to considering the petition as one for a writ of error coram nobis. Instead, the Petitioner contends that the trial court erred in finding that his petition, considering it as one for post-conviction relief, was barred by the statute of limitations. At the time the Petitioner’s convictions became final, a prisoner could petition for post-conviction relief “at any time after he ha[d] exhausted his appellate remedies and before the sentence ha[d] expired or ha[d] been fully satisfied.” Tenn. Code Ann. § 40-30-102 (1982). In 1986, this section was amended to provide that a “prisoner in custody under sentence of a court of this state must petition for post-conviction relief under this chapter within three (3) years of the date of the final action of the highest state appellate court to which an appeal is taken or consideration of such petition shall be barred.” Tenn. Code Ann. § 40-30-102 (1990). The three-year limitations period began to run for the

Petitioner on the effective date of the amended provision, July 1, 1986. See State v. Mullins, 767 S.W.2d 668, 669 (Tenn. Crim. App. 1988). The expiration of the three-year statute of limitations in the Petitioner's case occurred on July 1, 1989. As we stated above, the petition considered by the trial court in the present case was not filed until November 16, 1995.

Of course, the new Post-Conviction Procedure Act governs this petition and all petitions filed after May 10, 1995. See Tenn. Code Ann. § 40-30-201 et seq. (Supp. 1996). This Act provides, in pertinent part, that “notwithstanding any other provision of this part to the contrary, any person having ground for relief recognized under this part shall have at least one (1) year from May 10, 1995, to file a petition or a motion to reopen a petition under this part.” Compiler's Notes to Tenn. Code Ann. § 40-30-201 (Supp. 1996) (referring to Acts 1995, ch. 207, § 3). Relying on the opinion of this Court in Arnold Carter v. State, C.C.A. No. 03C01-9509-CC-00270, Monroe County (Tenn. Crim. App., Knoxville, July 11, 1996), rev'd, \_\_\_ S.W.2d \_\_\_ (Tenn. 1997), the Petitioner argues that the new Post-Conviction Procedure Act provides “a one-year window” during which each and every defendant may file a petition, even if the petition would have been long ago barred by the three-year statute provided under the previous act. Because his petition was filed within one year of May 10, 1995, the Petitioner contends that his petition is not barred by the statute of limitations.

This issue has been a divisive one, with other panels of this Court following the reasoning of the dissent in Carter and holding that the 1995 Act did not provide previously-barred petitioners with a new one-year period from May 10, 1995, during which they could petition for post-conviction relief. See Doyle Carter

v. State, C.C.A. No. 01C01-9511-CC-00398, Davidson County (Tenn. Crim. App., Nashville, Feb. 12, 1997); Eric C. Pendleton v. State, C.C.A. No. 01C01-9604-CR-00158, Davidson County (Tenn. Crim. App., Nashville, Feb. 12, 1997); Wallace Butler v. Ricky Bell, Warden, C.C.A. No. 02C01-9510-CC-00297, Fayette County (Tenn. Crim. App., Jackson, Nov. 19, 1996); Johnny L. Butler v. State, C.C.A. No. 02C01-9509-CR-00289, Shelby County (Tenn. Crim. App., Jackson, Dec. 2, 1996); Stephen Koprowski v. State, C.C.A. No. 03C01-9511-CC-00365, Anderson County (Tenn. Crim. App., Knoxville, Jan. 28, 1997); Steve Koprowski v. State, C.C.A. No. 03C01-9511-CR-00378, Knox County (Tenn. Crim. App., Knoxville, Jan. 28, 1997).

Our supreme court recently resolved the issue by holding that petitioners for whom the statute of limitations expired prior to the effective date of the new Act, May 10, 1995, do not have an additional “one-year window” in which to file for post-conviction relief. Carter v. State, \_\_\_ S.W.2d \_\_\_ (Tenn. 1997). After considering the legislative history of the new Act, the court concluded that the enabling provision’s language at issue in Carter was intended to protect the potential class of petitioners for whom the one-year limitations period under the new law had expired but the three-year limitations period under the old law had not. Id. Accordingly, the court concluded further that the language of the enabling provision was not intended to and did not revive post-conviction claims that were already barred by the previous three-year statute of limitations. Id.

Applying this reasoning to the case sub judice, we conclude that the Petitioner did not have a “one-year window” from May 10, 1995, in which to file his petition. The previous three-year statute of limitations began to run for the

Petitioner on July 1, 1986, and expired on July 1, 1989. As a result, the Petitioner was already barred by the previous statute of limitations on the date the new Act took effect, May 10, 1995. The Petitioner concedes that he does not fit within any of the statutorily-recognized exceptions to the statute of limitations. See Tenn. Code Ann. § 40-30-202(b) - (c) (Supp. 1996). Thus, the trial court did not err in finding that the petition was barred by the statute of limitations.

The Petitioner argues alternatively that if his petition is barred by the statute of limitations, then the statute of limitations is unconstitutional as applied to him. Citing Burford v. State, 845 S.W.2d 204 (Tenn. 1992), the Petitioner contends that application of the statute of limitations to bar his petition violates due process. He asserts that his grounds for post-conviction relief did not arise until he was prosecuted as an habitual criminal in California, after the point at which the limitations period began to run. Thus, he argues that because his claim is based on grounds for relief that did not exist when the limitations period began to run, application of the statute of limitations to bar his petition violates due process guarantees. See Burford, 845 S.W.2d at 208.

In Burford, our supreme court found the petitioner to be caught in a “procedural trap” because he was unable to challenge his Trousdale County persistent offender sentence until the underlying Wilson County convictions had been declared void in the county where those convictions occurred. Id. Until that time, Burford had no grounds to attack his Trousdale County conviction. Under those circumstances, the court held that strict application of the statute of limitations violated due process in that it denied the petitioner a reasonable opportunity to present his claim. Id.



The court further explained the Burford rationale in Sands v. State, 903 S.W.2d 297 (Tenn. 1995). In Sands, the court articulated a three-step analysis to determine whether Burford tolls the limitations period:

- (1) Determine when the limitations period would normally have begun to run;
- (2) determine whether the grounds for relief actually arose after the limitations period would normally have commenced; and,
- (3) if the grounds are “later-arising,” determine if, under the facts of the case, a strict application of the limitations period would effectively deny the petitioner a reasonable opportunity to present the claim.

Sands, 903 S.W.2d at 301. The Sands court also stated that, in making the third determination, courts should carefully weigh the petitioner’s liberty interest in collaterally attacking constitutional violations occurring during the conviction process against the State’s interest in preventing the litigation of stale and fraudulent claims. Id.

Applying the first step in the Sands analysis to the present case, we note that the limitations period began to run for the Petitioner on July 1, 1986. As we pointed out above, the Petitioner was convicted before the enactment of Tennessee Code Annotated section 40-30-102 in 1986. Thus, the previous three-year statute of limitations began to run on the effective date of the statutory provision, July 1, 1986. See Mullins, 767 S.W.2d at 669.

We turn now to the second step of the Sands analysis, determining whether the Petitioner’s grounds for relief actually arose after the limitations period had commenced. Of course, grounds for post-conviction relief exist when a conviction or sentence “is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the

United States.” Tenn. Code Ann. § 40-30-203 (Supp. 1996). In the case at bar, although the pro se petition is unartfully drawn in places, it is clear that the Petitioner asserts that he would not have entered guilty pleas had he known that his convictions could be used against him in the future. Accordingly, with regard to the abridgement of a constitutional right, the Petitioner argues that his guilty pleas were made involuntarily and unknowingly in violation of due process guarantees. See State v. Mackey, 553 S.W.2d 337, 340 (Tenn. 1977) (stating that for a guilty plea and the accompanying waiver of constitutional rights to be valid under the due process clause of the Fourteenth Amendment, it must be an intentional relinquishment of a known right or privilege; in other words, the decision to plead guilty must have been both voluntary and knowledgeable). In addition, the petition intimates that defense counsel may have provided ineffective assistance in recommending that the Petitioner plead guilty or in informing the Petitioner that the plea agreement had a legal effect which it could not have, namely limiting whether the convictions could be used against the Petitioner in the future.

We conclude that, unlike the petitioner in Burford, the Petitioner’s grounds for relief did not arise after the limitations period began to run for him on July 1, 1986. Instead, the Petitioner’s asserted grounds for relief, the involuntariness of his plea and intimations of ineffective assistance of counsel, existed at the time of his conviction. See Brown v. State, 928 S.W.2d 453, 456 (Tenn. Crim. App. 1996); Howard Templeton v. State, C.C.A. No. 01C01-9406-CC-00220, Warren County (Tenn. Crim. App., Nashville, Jan. 5, 1995). The petition for post-conviction relief indicates that the trial court asked the Petitioner if any promises were made to induce his guilty pleas and he answered negatively, even though

he knew at that time that one of his principal reasons for pleading guilty was the agreement that his convictions could not be used against him in the future. Moreover, we note that the record contains nothing to support the Petitioner's bare allegation that his plea agreement included an assurance that his convictions could not be used against him in the future. See Tenn. Code Ann. § 40-30-206(d) (Supp. 1996). The Petitioner failed to include any documentation of his plea agreement or copies of the judgments of conviction. Thus, because the Petitioner's alleged grounds for relief existed when the limitations period began to run, Burford does not apply to toll the statute of limitations.

The Petitioner contends that his grounds for relief are indeed "later-arising" because he did not know that his Tennessee convictions could be used against him until they were actually used against him in California. A panel of this Court, however, has previously held that a petitioner's lack of knowledge that he or she had legal grounds for a petition for post-conviction relief until after the limitations period had expired cannot defeat the application of the statute of limitations. Templeton, C.C.A. No. 01C01-9406-CC-00220, slip op. at 3. In fact, this Court has repeatedly rejected the notion that the post-conviction statute of limitations begins to run when a petitioner learns that certain constitutional violations have occurred, the so-called "discovery rule." See Passarella v. State, 891 S.W.2d 619, 625 (Tenn. Crim. App. 1994). As this Court stated in Templeton, "[t]o hold otherwise would defeat the purpose of the statute of limitations in protecting the State's interest in preventing the litigation of stale and fraudulent claims and in ensuring administrative efficiency and economy." Templeton, C.C.A. No. 01C01-9406-CC-00220, slip op. at 3.

For the reasons set forth in the discussion above, we conclude that the trial court did not err in dismissing the petition for post-conviction relief. We therefore affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE

CONCUR:

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THOMAS T. WOODALL, JUDGE

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JOHN K. BYERS, SENIOR JUDGE