

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**FILED**

**JAMES RICHARD SEEDEN,**

Appellant,

VS.

**STATE OF TENNESSEE,**

Appellee.

)  
) C.C.A. NO. 01C01-9707-CC-00315  
) (No. 697-249 Below) November 4, 1997  
) WILLIAMSON COUNTY Cecil W. Crowson  
) Appellate Court Clerk  
) The Hon. Cornelia A. Clark  
)  
) (Denial of Post-Conviction Relief)  
)  
) **AFFIRMED PURSUANT TO RULE 20**

**ORDER**

This matter is before the Court upon the state's motion requesting that the judgment in the above-styled cause be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules. The appellant opposes the motion. Having reviewed the pleadings and the record in the above-styled cause, the Court finds that this is an appropriate case for affirmance pursuant to Rule 20.

On July 2, 1997, the appellant filed a petition for post-conviction relief claiming that the indictments against him were fatally defective in that they failed to allege the proper mens rea. The appellant previously pled guilty to three counts of rape of a child on March 23, 1993. The judgment orders were entered on March 31, 1993.

The trial court dismissed the appellant's petition for post-conviction relief because it was filed outside the statute of limitation, it could not be considered as a habeas corpus petition in that it had been filed in the wrong court, and on the merits, the appellant was not entitled to relief.

At the time the appellant pled guilty, the Post-Conviction Procedure Act provided that a petitioner under sentence of a court of Tennessee had three years from the date of the final action of the highest state appellate court to which an appeal is taken to file a petition for post-conviction relief. See T.C.A. § 40-30-102 (repealed 1995). Effective May 10, 1995, the statute of limitation was reduced to one year. See T.C.A. § 40-30-202(a). Consideration of a petition filed after such time was barred unless the petitioner could show that one of the three enumerated exceptions applied. See T.C.A. § 40-30-202(b) (1995). Subsequently, on May 13, 1996, the Post-Conviction Procedure Act was amended to reflect that no court shall have jurisdiction to consider a petition filed after

the one-year statute of limitation unless one of the three enumerated exceptions applied. See T.C.A. § 40-30-202(b). In the present case, the appellant's petition for post-conviction is time-barred under either statute of limitation.

Moreover, the trial court properly determined that it could not consider the request for relief as a petition for habeas corpus. The petition in this case was filed in Williamson County, Tennessee, the county in which the appellant was originally convicted. His petition shows that he is presently incarcerated in Johnson County, Tennessee. A petition for habeas corpus must be filed in the county which is the most convenient in point of distance to the applicant unless a sufficient reason be given in the petition for not applying to such court. T.C.A. § 29-21-105 (1980). The petition was not filed in Johnson County nor was there any allegation as to why it was not filed in said county.

The Court finds that the trial court correctly held that the appellant's post-conviction petition was time-barred. Moreover, the trial court was correct in determining that it could not consider the request for relief as a petition for habeas corpus relief.

IT IS, THEREFORE, ORDERED that the state's motion to affirm the judgment of the trial court under Rule 20, Tennessee Court of Criminal Appeals Rules, is granted, and the judgment of the trial court is affirmed. The appellant being indigent, costs are taxed to the state.

ENTER, this the \_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
JOHN H. PEAY, JUDGE

CONCUR:

\_\_\_\_\_  
DAVID H. WELLES, JUDGE

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THOMAS T. WOODALL, JUDGE