

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

<p>FILED</p> <p>January 28, 1998</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

DARRELL RAY BEENE,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

)
) C.C.A. NO. 01C01-9707-CR-00313
) (No. 93-D-1462 Below)
)
) DAVIDSON COUNTY
) The Hon. J. Randall Wyatt, Jr.
)
) (Dismissal of Post-Conviction Petition)
) **AFFIRMED PURSUANT TO RULE 20**

ORDER

This matter is before the Court upon the petitioner’s motion requesting that counsel be appointed to represent him in the above-styled appeal. The petitioner is appealing from the dismissal of his post-conviction petition. In his petition for post-conviction relief, the petitioner challenged the legal sufficiency of his 1993 indictment and claimed that he received ineffective assistance of counsel. Having reviewed the petitioner’s motion and the record, we find that the petitioner’s motion is not well taken. Accordingly, we affirm the judgment of the trial court pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules.

Initially, the petitioner’s claim that his 1993 indictment failed to specifically allege the mens rea element of the offenses is without merit. This issue has been settled by our Supreme Court’s recent opinion in State v. Roger Dale Hill, Sr., No. 01S01-9701-CC-00005 (Tenn. Nov. 3, 1997). Moreover, the trial court correctly determined that the petitioner’s post-conviction petition was barred by the statute of limitation. Under the Post-Conviction Act, no court shall have jurisdiction to consider a petition filed after the one-year statute of limitation unless one of three enumerated exceptions applied. See T.C.A. § 40-30-202(b). In the present case, the trial court correctly determined that the appellant’s petition for post-conviction was time-barred.

IT IS, THEREFORE, ORDERED that the petitioner’s motion requesting

appointment of counsel is hereby denied. It is further ordered that the ruling of the trial court is affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeal Rules. The appellant being indigent, costs are taxed to the state.

ENTER, this the ____ day of January, 1998.

JERRY L. SMITH, JUDGE

CONCUR:

DAVID H. WELLES, JUDGE

THOMAS T. WOODALL, JUDGE