

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1997 SESSION

<p>FILED</p> <p>January 8, 1998</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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DENNIS P. NEILAN,)
)
 Appellant)
)
 V.)
)
 STATE OF TENNESSEE,)
)
 Appellee)

NO. 03C01-9611-CC-00411
 SEVIER COUNTY
 HON. REX HENRY OGLE
 JUDGE
 (Post-Conviction Relief)

FOR THE APPELLANT

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OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

William M. Barker, Judge

Opinion

The appellant, Dennis P. Neilan, appeals from the judgment of the Sevier County Circuit Court which dismissed, without hearing, his petition seeking post-conviction relief. We affirm the trial court pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

Following his pleas of guilty, the appellant was convicted on March 15, 1988, of the offenses of aggravated kidnapping, aggravated rape, aggravated robbery, and grand larceny. The appellant was sentenced to forty years' incarceration for those offenses.

Over eight years later, on June 21, 1996, the appellant filed his petition seeking post-conviction relief with respect to his conviction for aggravated kidnapping only. The State filed a motion to dismiss arguing that the appellant's petition was barred by the applicable statute of limitation. The trial court agreed and, accordingly, dismissed the petition.

On appeal, the appellant contends that the trial court erred in concluding that his post-conviction petition was time-barred. In that respect, the appellant relies upon this Court's opinion in Lawrence Moore v. State, No. 03C01-9504-CR-00122 (Tenn. Crim. App. at Knoxville, February 14, 1996). In that case, a panel of our Court held that the petitioner had raised a claim under State v. Anthony, 817 S.W.2d 299 (Tenn. 1991), and further concluded that Anthony announced a new constitutional rule which should be applied retroactively, and therefore, under Burford v. State, 845 S.W.2d 204 (Tenn. 1992), and Sands v. State, 903 S.W.2d 297 (Tenn. 1995), the petition was timely. The petitioner here contends that the facts in his case are similar to those in Moore, and the trial court erred in concluding that the statute of limitation barred the appellant's petition. We disagree.

On April 28, 1997, after the parties had filed their briefs in our Court, the supreme court unanimously reversed this Court's opinion in the Moore case. See Moore v. State, 943 S.W.2d 878 (Tenn. 1997).

In overruling this Court's decision in Moore, the supreme court reaffirmed its decision in State v. Denton, 938 S.W.2d 373 (Tenn. 1996), that State v. Anthony did not announce a new constitutional rule, and therefore, an Anthony issue does not constitute a later arising ground for relief under Burford and Sands. We are bound by the decisions of our supreme court, and accordingly, the trial court did not err in dismissing the appellant's petition.

WILLIAM M. BARKER, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

DAVID G. HAYES, JUDGE