

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

AUGUST 1998 SESSION

FILED

August 27, 1998

Cecil W. Crowson
Appellate Court Clerk

WALTER J. DOLAN,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

)
)
)
)
)
)
)
)
)

C.C.A. NO. 01C01-9710-CR-00460

DAVIDSON COUNTY

HON. J. RANDALL WYATT, JR.,
JUDGE

(Post-conviction)

FOR THE APPELLANT:

FOR THE APPELLEE:

GREG KING

222 Second Ave., North
Suite 360-M
Nashville, TN 37201

JOHN KNOX WALKUP

Attorney General & Reporter

CLINTON J. MORGAN

Counsel for the State
John Sevier Bldg.
425 Fifth Ave., North
Nashville, TN 37243-0493

VICTOR S. JOHNSON, III

District Attorney General

PAUL DEWITT

Asst. District Attorney General
Washington Sq. Two, Suite 416
222 Second Ave., North
Nashville, TN 37201

OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,

Judge

OPINION

In September of 1984, the defendant entered a guilty plea to bank robbery. For this conviction he received a thirty (30) year sentence, concurrent with a previous federal sentence. He did not seek direct review of his sentence. In June of 1987, he filed a petition for writ of habeas corpus, which was denied without a hearing on October 19, 1987. On October 24, 1989, his motion to reconsider was denied.

On April 25, 1996, the petitioner filed the instant petition for post-conviction relief alleging that his guilty plea was the result of ineffective assistance of counsel and was uninformed and involuntary. He also alleged a violation of the double jeopardy clause and a denial of due process, contending that because he was incarcerated in a federal prison he did not have access to Tennessee law books. After appointment of counsel, an amended petition was filed and the petition was dismissed without a hearing on April 22, 1997.

In this Court, the petitioner complains that the trial court erred in dismissing his petition as time barred by the statute of limitations.

The petitioner urges that the statute of limitations should be tolled in his case because he was unaware of the enactment of the three year statute or the subsequent one year statute. He contends that he was not given notice of the amendment to the statute and therefore his rights of due process were violated. We find that the trial court properly dismissed the petition as barred by the statute of limitations.

Under the applicable statute of limitations, the petition was barred on July 1, 1989. See Abston v. State, 749 S.W.2d 487, 488 (Tenn. Crim. App. 1988). Ignorance of the existence of a statute of limitations does not toll the running of said statute. Brown v. State, 928 S.W.2d 453 (Tenn. Crim. App. 1996); State v. Phillips, 904 S.W.2d 123, 124 (Tenn. Crim. App. 1995).

Under the present Post-Conviction Procedure Act, T.C.A. § 40-30-201 et. seq., the statute of limitations for post-conviction relief is reduced to one year. This Act provides for a one year grace period from May 10, 1995, to file a petition or reopen a petition for post-conviction relief. The grace period is inapplicable to this petition since it was already barred by the statute of limitations when the most recent statute was enacted. The new Act was not intended to revive previously barred claims, Carter v. State, 952 S.W.2d 417, 420 (Tenn. 1997), nor did the petitioner allege grounds that would allow him to reopen a previously filed petition pursuant to T.C.A. § 40-30-217(a).

The dismissal of the petition by the trial court is affirmed.

JOHN H. PEAY, Judge

CONCUR:

THOMAS T. WOODALL, Judge

L. TERRY LAFFERTY, Special Judge