

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

AUGUST 1998 SESSION

<p>FILED</p> <p>September 23, 1998</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

THOMAS RAY DYER,)
)
 Appellant,)
)
 v.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

No. 03C01-9712-CR-00515
 Knox County
 Honorable Richard Baumgartner, Judge
 (Post-Conviction)

For the Appellant:

Mark E. Stevens
 District Public Defender
 and
 John Halstead
 Assistant Public Defender
 1209 Euclid Avenue
 Knoxville, TN 37921
 (AT TRIAL)

Mark E. Stevens
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 and
 Paula R. Voss
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 Assistant Public Defenders
 1209 Euclid Avenue
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 (ON APPEAL)

For the Appellee:

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 and
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Randall E. Nichols
 District Attorney General
 and
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 Assistant District Attorney General
 City-County Building
 Knoxville, TN 37902

OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
 Judge

OPINION

The petitioner, Thomas Ray Dyer, appeals as of right from the Knox County Criminal Court's order dismissing his petition for post-conviction relief as untimely filed. The petitioner asserts that his illiteracy should serve as a basis for waiving the statute of limitations. We disagree.

The petitioner was convicted on June 13, 1988, upon guilty pleas, of second degree burglary, grand larceny, and attempting to introduce drugs into a county jail, and received an effective sentence of twenty-one years. He filed his petition for post-conviction relief on March 30, 1995, asserting various constitutional violations. The petition contains no allegation about why it was not filed earlier. It has not been amended by counsel.¹

After hearing arguments from counsel and unsworn statements by the petitioner relative to his claimed illiteracy, the trial court dismissed the petition without an evidentiary hearing because the then applicable statute of limitations of three years from the end of the convicting cases had already run. It stated that the fact that a petitioner was illiterate would not toll the running of the statute of limitations.

The petitioner acknowledges that this court has previously stated illiteracy and personal ignorance are not sufficient grounds for avoiding the running of the statute. See Bernard Nelson v. State, No. 01C01-9212-CC-00375, Montgomery County (Tenn. Crim. App. Nov. 18, 1993); see also Raymond Dean Willis v. State, No. 01C01-9211-CR-00359, Davidson County (Tenn. Crim. App. Oct. 21, 1993), app. denied

¹ Ordinarily, a petition that shows on its face that it was filed after the statute of limitations has run and fails to allege adequate grounds to toll the running of the statute is subject to dismissal upon the pleadings without any hearing. Such was not done in this case, with the trial court listening to an issue not raised by the pleadings.

(Tenn. Mar. 7, 1994). (Ignorance of existence of statute of limitation does not toll running of the statute.) He urges us, though, to reconsider and to hold that an inmate's ignorance of the law, when caused by illiteracy, constitutes sufficient cause to waive the limitation period.

We do not believe that this case comes to us in a procedural or substantive posture that would warrant any change in our view of the law. The judgment of the trial court is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Joe G. Riley, Judge

Thomas T. Woodall, Judge