

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JULY 1998 SESSION

<p>FILED</p> <p>September 10, 1998</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

DONALD RAY TURNER,)
)
 Appellant,)
)
 v.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

No. 03C01-9701-CR-0007
 Hamilton County
 Honorable Douglas A. Meyer, Judge
 (Post-Conviction)

For the Appellant:

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For the Appellee:

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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
 Judge

OPINION

The petitioner, Donald Ray Turner, appeals as of right from the Hamilton County Criminal Court's denial of his second petition for post-conviction relief from his conviction upon the entry of a guilty plea to aggravated sexual battery on July 8, 1993. The petitioner received a Range I sentence of eight years to be served concurrently with a federal sentence. The trial court held that the petition for relief was barred by the statute of limitations and that, in any event, the grounds asserted for relief had been waived, were previously determined, or lacked merit. The petitioner, proceeding on the record pursuant to Rule 29(c), T.R.A.P., argues that he is entitled to post-conviction relief because federal and state authorities failed to abide by the requirements of the Interstate Compact on Detainers in that he was not transferred within thirty days, was not tried within one hundred eighty days, and was not provided a hearing before being transferred. We affirm the denial of post-conviction relief.

The petitioner's guilty plea was entered on July 8, 1993, and no appeal was taken. Under the then-existing Post-Conviction Procedures Act, the petitioner had to file a petition within three years from the date of the final action of the highest state court to which an appeal was taken. See T.C.A. § 40-30-102 (1990) (repealed 1995). However, under the 1995 Post-Conviction Procedures Act that controls all post-conviction petitions filed after May 10, 1995, any then-existing but unfiled claims were given only one year from May 10, 1995, to be filed by a post-conviction petition. See T.C.A. § 40-30-202(a); Albert Holston v. State, 02C01-9609-CR-00298, Shelby County (Tenn. Crim. App. July 28, 1997). This means that the petitioner was required to file his petition on or before May 10, 1996. Thus, the petition in this case, filed on July 17, 1996, was untimely and is barred.

As for the grounds raised in the petition, the record supports the trial court's conclusions that they were previously determined or waived by the entry of a guilty plea. Moreover, the claims raised by the petitioner are not cognizable in a petition for post-conviction relief. Post-conviction relief is available when the conviction or sentence is void or voidable because of the abridgement of a constitutional right. T.C.A. § 40-30-203. A prisoner's rights under the Interstate Compact on Detainers are not constitutionally based. State v. Suarez, 681 S.W.2d 584, 586 (Tenn. Crim. App. 1984), overruled on other grounds by State v. Moore, 774 S.W.2d 590 (Tenn. 1989).

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Gary R. Wade, Presiding Judge

David H. Welles, Judge