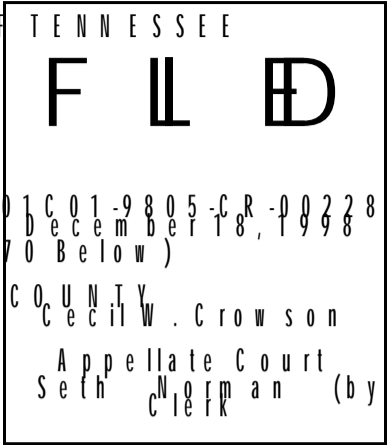


IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE



ELISEO HERNANDEZ ,

Appellant,

V S .

interchange)

STATE OF TENNESSEE ,

Petitioner)

Appellee.

)  
) C.C.A. NO. 01C01-9805-CR-00228  
) (No. 95-B-70 Below)  
) DAVIDSON COUNTY  
) Cecil W. Crowson  
) The Hon. Seth Norman (by  
)  
) (Dismissal of Post-Conviction  
)  
) AFFIRMED PURSUANT TO RULE 20

O R D E R

This matter is before the Court upon the state's motion requesting that the judgment in the above-styled cause be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules. The petitioner opposes the motion.

It appears that in June 1995, the petitioner pled guilty to aggravated burglary and received a sentence of three years as a Range I, standard offender. The petitioner filed his post-conviction petition on March 23, 1998. Subsequently, on April 13, 1998, the trial court dismissed the petition as outside the statute of limitation. We affirm.

Pursuant to T.C.A. § 40-30-206(a), a petitioner must petition for post-conviction relief within one year of the date of the final action of the highest state appellate court to which an appeal was taken. Under T.C.A. § 40-30-202(b), a court does not have jurisdiction to consider a petition for post-conviction relief if it was filed outside the one-year statute of

limitation unless (1) the claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required; (2) the claim in the petition is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or (3) the claim in the petition seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid.

In the present case, the petitioner filed his petition for post-conviction relief outside the statute of limitation set forth in T.C.A. § 40-30-202(a), and he has failed to show that any of his claims fall within one of the exceptions set forth in T.C.A. § 40-30-202(b). In his response, the petitioner cites to Sands v. State, 903 S.W.2d 297 (Tenn. 1995), for the argument that the statute of limitation should not be strictly applied. In Sands, our Supreme Court was addressing the previous Post-Conviction Act. Under the new Act, the exceptions are explicitly set forth in T.C.A. § 40-30-202(b), and as previously stated, the petitioner has failed to show that his claims fall within one of these exceptions.

IT IS, THEREFORE, ORDERED that the state's motion to affirm the judgment of the trial court under Rule 20, Tennessee Court of

Criminal Appeals Rules, is granted, and the judgment of the trial court is affirmed. It appearing that the petitioner is indigent, costs of these proceedings are taxed to the state.

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JERRY L. SMITH, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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DAVID H. WELLES, JUDGE