

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1999 SESSION

FILED
March 15, 1999
Cecil Crowson, Jr.
Appellate Court Clerk

WILLIE EDWARD THORNTON,)
)
Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
Appellee.)

NO. 02C01-9809-CC-00260

FAYETTE COUNTY

**HON. JON KERRY BLACKWOOD,
JUDGE**

(AFFIRMED - Rule 20)

ORDER

Appellant, Willie Edward Thornton, appeals the summary dismissal of his petition for post-conviction relief. We affirm the dismissal pursuant to Rule 20, Tennessee Court of Criminal Appeals.

I

On April 4, 1988, appellant was convicted by a Fayette County jury of first degree murder and use of a firearm in commission of a felony. He was sentenced to life imprisonment plus five years. The convictions and sentences were affirmed by this Court. State v. Willie Edward Thornton, C.C.A. No. 3, Fayette County (Tenn. Crim. App. filed June 7, 1989, at Jackson). Permission to appeal was denied by the Tennessee Supreme Court. State v. Willie Edward Thornton, C.C.A. No. 3, Fayette County (Tenn. filed August 7, 1989, at Jackson).

On January 5, 1990, he filed his first petition for post-conviction relief. The petition was denied after an evidentiary hearing by order entered December 14, 1990. The dismissal was affirmed by this Court. Willie Edward Thornton v. State, C.C.A. No. 02C01-9102-CC-00001, Fayette County (Tenn. Crim. App. filed May 20, 1992, at Jackson). Application for permission to appeal was denied by the Tennessee Supreme Court. Willie Edward Thornton v. State, C.C.A. No. 02C01-9102-CC-00001, Fayette County (Tenn. filed July 27, 1992, at Jackson).

Appellant sought *habeas corpus* relief in 1993. The petition was dismissed by the trial court, and the dismissal was affirmed by this Court. Willie Edward Thornton v. Fred Raney, Warden, C.C.A. No. 02C01-9302-CC-00025, Lauderdale County (Tenn. Crim. App. filed January 26, 1994, at Jackson). Application for permission to appeal was denied by the Tennessee Supreme Court. Willie Edward Thornton v. Fred Raney, Warden, C.C.A. No. 02C01-9302-CC-00025, Lauderdale County (Tenn. filed May 23, 1994, at Jackson).

The present petition for post-conviction relief was filed on June 15, 1998. Appellant alleged he was improperly sentenced by the trial judge rather than the jury; the "reasonable doubt" jury instruction was unconstitutional; the record fails to show that the jury reached a unanimous decision; and the trial judge failed to poll the jury. The trial court dismissed the petition as being barred by the statute of limitations. We conclude the trial court acted properly in dismissing the petition.

II

The petition is barred by the one-year statute of limitations, and none of the statutory exceptions apply. See Tenn. Code Ann. § 40-30-202(a), (b). Furthermore, since a prior petition was filed and resolved on the merits, the present petition was properly dismissed. See Tenn. Code Ann. § 40-30-202(c). Although a motion to reopen may be filed to reopen a prior post-conviction petition, none of the grounds authorizing such relief apply in this case; nor has appellant followed the proper procedure. See Tenn. Code Ann. § 40-30-217(a), (c). In addition, the grounds for relief alleged in the present petition are waived due to appellant's failure to present them in the prior petition. See Tenn. Code Ann. § 40-30-206(g).

IT IS, THEREFORE, ORDERED that the judgment of the trial court be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals. It appearing that appellant is indigent, costs are taxed to the state.

JOE G. RILEY, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

JAMES C. BEASLEY, SR., SPECIAL JUDGE