

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**FILED**

HUBERT R. FRITTS,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

)  
) C.C.A. NO. 01C01-9906-CC-00207  
) (No. F-34884 & F-34885 Below) October 8, 1999  
) RUTHERFORD COUNTY  
) Cecil Crowson, Jr.  
) The Hon. James R. Clayton, Jr. Appellate Court Clerk  
)  
) (Dismissal of Post-Conviction Petition)  
)  
) AFFIRMED PURSUANT TO RULE 20

**ORDER**

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. Having reviewed the petitioner's brief, the state's motion, and the record on appeal, the Court finds that the motion is well taken.

The petitioner contends that because he was misled by the prosecutor and ill-advised by his own attorney, he was led to believe that his sentence in this case would run concurrent to his sentence in the state of Kentucky. It appears from the post-conviction petition that the petitioner pled guilty to escape and to the introduction of contraband into a penal institution on November 20, 1995. According to the petitioner, he was sentence to one year and three years respectively. The one year sentence was to run "consecutive to old sentence," and the three year sentence was to run concurrent to the one-year sentence. The petitioner further contends that according to the plea, the sentence was to run concurrent with his sentence in the state of Kentucky. While conceding that the statute of limitations had expired by the time he filed his post-conviction petition, the petitioner submits that pursuant to Burford v. State, 845 S.W.2d 204, 208 (Tenn. 1992), he should have been afforded counsel and an opportunity to present his claim which he was unaware of until November 17, 1998.

Pursuant to T.C.A. § 40-30-202(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 limitations 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.

The statute clearly states that the one-year limitation period shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. T.C.A. § 40-30-202(a). Moreover, application of the statute of limitations in this instance does not violate due process principles. In Burford v. State, 845 S.W.2d 204, 208 (Tenn. 1992), our Supreme Court held that in certain situations application of the statute of limitations in a post-conviction proceeding might violate constitutional due process. In determining whether there has been such a violation, the essential question is whether the time period allowed by law provides the petitioner a fair and reasonable opportunity to file suit. Id. In Burford, the Supreme Court held that the petitioner was "caught in a procedural trap and unable to initiate litigation ... despite the approach of the three-year limitation." Id.

In the present case, the petitioner contends that because he was misled by the prosecutor and ill-advised by his attorney, he pled guilty with the understanding that his sentence would run concurrent to his sentence in Kentucky and that he did not know of this claim until November 17, 1998. Despite these assertions, the record on appeal is insufficient to support the petitioner's due process claim.

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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DAVID H. WELLES, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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THOMAS T. WOODALL, JUDGE