

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 10, 2023

FILED

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Clerk of the
Appellate Courts

CHARLES CLAYBROOKS v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Davidson County
No. 2006-A-348 Jennifer Smith, Judge**

No. M2022-00579-CCA-R3-PC

Petitioner, Charles Claybrooks,¹ appeals the dismissal of his 2021 petition seeking post-conviction relief from his 2010 convictions for one count aggravated robbery and two counts of aggravated assault. Following a hearing, the post-conviction court concluded that Petitioner “failed to demonstrate entitlement to the tolling of the statute of limitations” and dismissed the Petition. Discerning no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and JILL BARTEE AYERS, JJ., joined.

Charles Claybrooks, Only, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Andrew C. Coulam, Senior Assistant Attorney General; Glenn R. Funk, District Attorney General; and Doug Thurman, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On July 7, 2021, Petitioner filed a pro se petition for post-conviction relief (the Petition) in which he claimed his guilty pleas in Case No. 2006-A-348 were unknowingly and involuntarily entered because he was not present at the plea submission hearing, that the signatures on the plea form were not his, that he was actually innocent of the charges, and that trial counsel failed to file a direct appeal “as promised.” As best as we can tell from the Petition and Petitioner’s testimony, Petitioner claims that, on November 15, 2010,

¹ The judgments of conviction from which Petitioner seeks relief and the underlying indictment in Case 2006-A-348 show Petitioner’s full name to be Charles Edward Claybrooks, Jr.

someone purporting to be Petitioner pled guilty to one count of aggravated robbery and two counts of aggravated assault based upon an incident that occurred at Auto Zone on October 9, 2005. The person was sentenced to an effective term of twenty years at 45% service pursuant to a plea agreement worked out on the morning of trial. The twenty-year sentence was ordered to be served *concurrently* with Petitioner's sixty-year sentence in Case No. 2006-A-97.² Petitioner claims due process requires tolling of the statute of limitations "due to misrepresentation and misconduct" by trial counsel.

After determining the facts alleged in the Petition, if true, could establish a basis for equitable tolling, the post-conviction court appointed counsel to represent Petitioner. The State filed an answer to the Petition, to which it attached a copy of the "Petition to Enter Plea of Guilt" ("the plea form") and the judgments of conviction in Case No. 2006-A-348.

On April 8, 2022, the post-conviction court held an evidentiary hearing for the limited purpose of determining if the statute of limitations should be tolled. Petitioner, who was the only witness to testify at the hearing, claimed that, at the time of the November 15, 2010 plea submission hearing, he was incarcerated at the Hardeman County Correctional Facility and that he was not transported to Davidson County. He claimed that the only times he was in court were in 2007 or 2008 for a jury trial and sentencing hearing in Case No. 2006-A-97 and that he "never came back into this courtroom" after he was sentenced in that case.

After examining the plea form, Petitioner stated that the signature on the form was not his. Petitioner identified a Notice of Board Action (the "Notice") from a parole revocation hearing that took place after he "caught these new charges."³ The "new

² To assist in the resolution of this proceeding, we take judicial notice of the record from the Petitioner's direct appeal in Case No. 2006-A-97. *See* Tenn. R. App. P. 13(c); *State v. Lawson*, 291 S.W.3d 864, 869 (Tenn. 2009); *State ex rel Wilkerson v. Bomar*, 376 S.W.2d 451, 453 (Tenn. 1964). Petitioner's convictions and effective *sixty-year* sentence for three counts of aggravated robbery and two counts of aggravated assault based upon an incident that occurred at The Athlete's Store on July 31, 2005, were affirmed on direct appeal. *State v. Charles Edward Claybrooks, Jr.*, No. M2007-02685-CCA-R3-CD, 2009 WL 1643440, at *1, (Tenn. Crim. App. June 12, 2009), *perm. app. denied* (Tenn. Oct. 19, 2009). It is unclear why the Petitioner refers to a thirty-year sentence throughout the Petition and his testimony. The trial court in Case No. 2006-A-97 sentenced Petitioner "to thirty years as a career offender for each aggravated robbery conviction, the first two to run consecutively to each other and the remaining aggravated robbery sentence to run concurrently with the first two." The fifteen-year sentence for each of the aggravated assaults was to run concurrently. *Id.*

³ It is unclear for what sentence or case the State sought to revoke Petitioner's parole. This court stated in the opinion in the direct appeal in Case No. 2006-A-97:

[Petitioner] has amassed a relatively lengthy criminal record in a short period of time.
[Petitioner]'s convictions for the prior aggravated robbery offenses occurred on June 5,

charges” listed on the Notice were the November 15, 2010 convictions for one count of aggravated robbery and two counts of aggravated assault, which correspond exactly to the convictions in Case No. 2006-A-348. Petitioner said that both signatures on the Notice were his and that he signed the Notice on May 2, 2011. Petitioner moved to introduce the Notice into evidence. The post-conviction court asked the State if it had an objection to the Notice being used for signature comparison purposes. When the State responded that it did not object, the Notice was entered as Exhibit 1. The plea form was then entered as Exhibit 2.

Petitioner claimed that, in late 2020, while serving the thirty-year sentence in Case No. 2006-A-97, he “was going through some paperwork” and discovered that he also had a twenty-year sentence in Case No. 2006-A-348 and that he filed the Petition within one year of that discovery. When asked on direct examination if there were “any other opportunities for you to notice [the conviction in Case No. 2006-A-348] before noticing it in 2020,” Petitioner explained that “[t]he reason that I never even looked at it is because my old lawyer that I had, which I sent the paperwork in to the Court -- I was under the impression that he was filing my post-conviction.” Petitioner then clarified that it was the direct appeal and post-conviction relief petition from the thirty-year sentence in Case No. 2006-A-97. He said “there was never an indictment” for the charges in Case No. 2006-A-348 and that he did not know anything about the twenty-year sentence until 2020.

On cross-examination, Petitioner agreed that the counsel who represented him at the jury trial in Case No. 2006-A-97 was the same counsel who is shown on the plea form as representing the person who pled guilty in Case No. 2006-A-348. The following dialogue between the State and Petitioner then occurred:

Q. Have you looked to see what the allegations are in this 2006-A-348? Do you know what is alleged in that case?

A. I think it was robbery and aggravated assault.

Q. Well, robbery -- if I said robbery of some Auto Zones, does that ring a bell?

1997. The offenses in the case at hand occurred on July 31, 2005. This was a mere eight years later, during which time he was serving his twenty-four-year sentence for the prior aggravated robberies. We can only conclude, given the time frame, that [Petitioner] committed the offenses at hand within a few months of being released on parole.

Charles Edward Claybrooks, Jr., 2009 WL 1643440, at *5.

A. Yeah. That's what I was convicted of. But that was not what the 20[-year sentence] was for. I was convicted of that for the 30. That's what that 30-year sentence was.

...

Q. Yeah. This case [2006-A-348] did not go to trial. There was a plea.

A. And that's what I am telling you I wasn't present for.

Q. You weren't present for. Even though someone that I guess was sitting next to [trial counsel] and for whatever reason wanted to impersonate you and decided to take a 20-year sentence in your place was here. I guess that's what happened. And somehow it got by [the trial judge]. And somehow it got by the same prosecutor who was prosecuting you on the other cases.

A. Yeah.

Q. That's what you are saying today?

A. All I am saying is that I never signed for a 20-year sentence to coincide with whatever it is that I am doing. I never signed for that. It didn't show up on my time sheet. When I looked back at my time sheet, it didn't show up until five years after I was already convicted. So[,] if I went this day and signed for this, it should have already been on there if it was an ongoing case.

....

Q. And you are saying from 2010 until sometime in late 2020 –

A. Uh-huh.

Q. -- you never looked this up, you never saw this case on your record?

A. I never looked it up because I was under the impression that my post[-]conviction was being done. So[,] I had no reason to go -- to delve into it, to look into it. But once I figured out nothing was being moved, I was

stagnant, that's what made me look into it, and that's how I discovered that. You know, it's not a big – it's not going to change –[.]

Upon motion of the State, the Court Minutes for Monday, November 15, 2010, were admitted into evidence as Exhibit 3. The Court Minutes show the style for Case No. 2006-A-348 as *State v. Charles Edward Claybrooks, Jr.*, and state that Petitioner signed a written waiver of trial by jury and “after being duly sworn in open court” and “testifying and pleading guilty” was found guilty of one count of aggravated robbery and two counts of aggravated assault. The Court Minutes show trial counsel as the attorney for Petitioner.

After argument of the parties, the post-conviction court made several findings. The court found that Petitioner's testimony was not credible and was “contradicted by the minute entry that's been admitted into evidence that indicates [Petitioner] was present in person[.]” The court found that Petitioner's testimony was “inconsistent with common sense, which based upon the fact that his attorney clearly was familiar with him, had already represented him through trial, and certainly knew that whoever was sitting next to him and signed this document, this plea petition during a plea proceeding, was in fact [Petitioner].” The court found that it “was highly unlikely that [trial counsel] would make an error in the identity of the client sitting next to him.” The court rejected “in its entirety [Petitioner]'s testimony claiming that he was not present during his plea proceeding[.]” The court concluded that Petitioner “failed to demonstrate entitlement to the tolling of the statute of limitations” and dismissed the Petition.

Analysis

On appeal, Petitioner claims that the post-conviction court abused its discretion by depriving Petitioner of a “full and fair equitable tolling due process hearing” and that “due process require tolling of the statute of limitation due to misrepresentation and misconduct of [trial] counsel.” The State responds the post-conviction court correctly held that due process tolling was not warranted. We agree with the State.

The Post-Conviction Procedure Act states that “a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part . . . within one (1) year of the date on which the judgment became final, or consideration of the petition shall be barred.” Tenn. Code Ann. § 40-30-102(a) (2022). Tennessee courts “have previously recognized that in certain circumstances, strict application of the statute of limitations would deny a defendant a reasonable opportunity to bring a post-conviction claim and thus, would violate due process.” *Williams v. State*, 44 S.W.3d 464, 468 (Tenn. 2001). “A petitioner is entitled to due process tolling upon a showing (1) that he or she has been pursuing his or her rights diligently, and (2) that some extraordinary circumstance stood in his or her way and prevented timely filing.” *Whitehead v. State*, 402 S.W.3d 615,

631 (Tenn. 2013). The court in *Whitehead* cautioned that due process tolling “must be reserved for those rare instances where—due to circumstances external to the party’s own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.” *Id.* at 631-32 (quoting *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000)).

“Issues regarding whether due process required the tolling of the post-conviction statute of limitations are mixed questions of law and fact and are, therefore, subject to de novo review.” *Whitehead*, 402 S.W.3d at 621. However, the post-conviction court’s findings of fact are binding on this court unless the evidence preponderates against them. *Id.* We also “must defer to a post-conviction court’s findings” with regard to the credibility of the witnesses. *Id.* The post-conviction court’s ultimate conclusion as to whether due process requires tolling the statute of limitations is a question of law. *Id.*

We agree fully with the post-conviction court’s finding that Petitioner was not credible. Our review of the proof fully supports the post-conviction court’s rejection of Petitioner’s testimony that he was not present during his plea submission proceeding in Case No. 2006-A-348. Petitioner’s claim that trial counsel, who had previously represented him during a jury trial, at the sentencing hearing, and on appeal, somehow did not realize that the person he represented who was pleading guilty was not Petitioner is absurd. Concerning the trial court’s credibility finding, it is immaterial whether Petitioner’s testimony was the result of confusion, selective memory, or untruthfulness. *See Nesbit v. State*, 452 S.W.3d 779, 797 (Tenn. 2014) (affirming the credibility finding after the post-conviction court found that the testimony of two witnesses was the result of a selective memory and was untrue).

Additionally, the Notice signed by Petitioner on May 2, 2011, shows on its face that the parole violation was related to the November 15, 2010 convictions for one count of aggravated robbery and two counts of aggravated assault, which correspond exactly to the convictions in Case No. 2006-A-348. If Petitioner had been pursuing his rights diligently, he would have known he had the convictions almost ten years before he filed the Petition.

The post-conviction court provided Petitioner a full and fair hearing. Petitioner failed to show any “misrepresentation and misconduct of [trial] counsel.” Petitioner failed to show that he has pursued his rights diligently or that “some extraordinary circumstance” stood in his way and “prevented timely filing.” *Whitehead*, 402 S.W.3d at 631.

Conclusion

For the foregoing reasons, the post-conviction court's dismissal of the Petition is affirmed.

ROBERT L. HOLLOWAY, JR., JUDGE