

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs September 7, 2023

FILED

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Clerk of the
Appellate Courts

**WILLIAM PATRICK ROBERSON A/K/A WILLIAM PATRICK
ROBINSON v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Carroll County
No. 02-CR-1840 Bruce Irwin Griffey, Judge**

No. W2022-01408-CCA-R3-PC

The petitioner, William Patrick Roberson,¹ appeals pro se from the Circuit Court of Carroll County's dismissal of his third request for post-conviction relief. Following review, we affirm the judgment of the post-conviction court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TOM GREENHOLTZ, JJ., joined.

William Patrick Roberson, Nashville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Neil Thompson, District Attorney General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

On March 18, 2002, the petitioner pled guilty to one count each of first-degree murder during the perpetration of a felony and especially aggravated robbery as part of a negotiated plea deal with the State of Tennessee. Per the terms of the plea, the State agreed to not seek the death penalty and to *nolle prosequi* a third count of theft of property. After a sentencing hearing, the petitioner received a sentence of imprisonment for life without

¹ In the record, there are discrepancies regarding the petitioner's last name. The instant appeal lists the petitioner's name as both "Robinson" and "Roberson" in the caption. Since this Court has previously referred to the petitioner as "Robinson," we will use that name for consistency purposes.

parole for his first-degree felony murder conviction and a twenty-five-year sentence for his especially aggravated robbery conviction. The sentences were ordered to be served concurrently. The petitioner did not appeal his convictions or his sentence.

On February 26, 2003, the petitioner filed his first petition for post-conviction relief. Initially, the post-conviction court summarily dismissed the petition holding that the petitioner failed to state a factual basis for the grounds alleged. This Court reversed the judgment of the post-conviction court on appeal finding that the petitioner had put forth sufficient facts to establish two colorable claims. *See Robinson v. State*, No. W2003-01393-CCA-R3-PC, 2004 WL 875267 (Tenn. Crim. App. April 22, 2004).

Upon remand, post-conviction counsel was appointed, an amended petition was filed, and a hearing was held. On December 30, 2004, the post-conviction court ultimately dismissed the petition, finding that the petitioner entered his guilty plea knowingly and voluntarily and that the petitioner was represented by capable and effective counsel. On September 8, 2005, this Court affirmed the judgment of the post-conviction court. *See Roberson v. State*, No. W2005-00163-CCA-R3-PC, Slip Op. at *6, (Tenn. Crim. App. Sept. 8, 2005).

On July 20, 2009, the petitioner filed a second petition for post-conviction relief, repeating his claim of ineffective assistance of counsel. On August 31, 2009, the post-conviction court denied relief on the basis that the applicable statute of limitations had expired, the petitioner's argument had been adjudicated on the merits in a previous action, and the petition failed to assert a colorable claim. On August 18, 2010, this Court affirmed the post-conviction court's denial of relief on the basis that "the petition was not filed within the applicable statute of limitations, and it was successive to a prior petition." *See Robinson v. State*, No. W2009-02180-CCA-R3-PC, 2010 WL 3293918 (Tenn. Crim. App. Aug. 18, 2010). Additionally, this Court held that the statute of limitations was not tolled because "[t]he record shows that the petitioner was given a reasonable opportunity to have his claim adjudicated," and concluded that the dismissal was appropriate because the record conclusively established the petitioner was not entitled to relief. *Id.*

On August 22, 2022, twenty years after his judgment was final and twelve years after the petitioner's most recent appeal was denied, the petitioner filed a third request for relief.² The petitioner, again, based his claims for relief on allegations of ineffectiveness

² The petitioner entitled his filing as a "Motion to Reinstate the Petitioner's Initial Plea Agreement with the State for the Petitioner to Receive a Sentence Less than a Death Sentence as Agreed to by the Petitioner and the Prosecution for Entering a Guilty Plea" in addition to "Leave to Proceed as a Poor Person in Trial Court," "Motion to Enforce Plea Agreement," and "Affidavit of Affiant William Patrick Roberson." In accordance with Tennessee Supreme Court Rule 28 and Tennessee's Post-Convictions Procedure Act, the post-conviction court treated the pleadings and requested relief as a request for post-conviction relief.

of counsel, that his guilty plea was entered into unknowingly and involuntarily, that his sentence was illegal, and that the trial court's sentencing was outside the negotiated plea agreement.

On September 1, 2022, the post-conviction court entered an order summarily dismissing the petition for relief. More specifically, the post-conviction court found that (1) the petition was barred by the statute of limitations, (2) a prior post-conviction action was filed in this matter and that any possible claims for relief should have been raised in the petitioner's first post-conviction petition, and (3) the petitioner's conviction and sentence were the result of a knowingly and voluntarily negotiated plea with the advice of competent counsel.

This timely appeal followed.

Analysis

After review of the record, the applicable law, and the arguments of the parties, we affirm the judgment of the post-conviction court and its determination that the petition is barred by the statute of limitations and is a successive request for post-conviction relief. Additionally, even if this Court were to reach the merits of the request, there is no colorable claim for which relief may be granted.

I. Petitioner's Request Violates the Statute of Limitations of Tenn. Code Ann. § 40-30-102

A post-conviction petitioner has one year from "the date of the final action of the highest state appellate court to which an appeal is taken" in which to file a petition for post-conviction relief. Tenn. Code Ann. § 40-30-102(a). "Time is of the essence of the right to file a petition for post-conviction relief." *Id.* Untimely filing of a post-conviction petition extinguishes a petitioner's post-conviction claims. *Id.*

However, if a petitioner faces circumstances "beyond his control," due process concerns permit courts to excuse an otherwise untimely post-conviction petition. *See Williams v. State*, 44 S.W.3d 464, 468 (Tenn. 2001). The Tennessee Supreme Court has delineated limited situations which allow for due process tolling of an untimely post-conviction petition. To qualify, a petitioner must prove his post-conviction petition was untimely due to mental impairment or attorney misrepresentation. *See Williams*, 44 S.W.3d at 470-71; *Seals v. State*, 23 S.W.3d 272, 277-80 (Tenn. 2000). "In every case in which we have held the statute of limitations is tolled, the pervasive theme is that circumstances *beyond a petitioner's control* prevented the petitioner from filing a petition

for post-conviction relief within the statute of limitations.” *Smith v. State*, 357 S.W.3d 322, 358 (Tenn. 2011) (emphasis in original). Thus, in order to succeed, a petitioner must provide sufficient facts which prove one of these limited circumstances affected the filing of his post-conviction petition. *Williams v. State*, No. W2011-00202-CCA-R3-PC, 2011 WL 2410364, at *1-2 (Tenn. Crim. App. June 9, 2011), *perm. app. denied*, (Tenn. Oct. 18, 2011). Absent sufficient facts establishing a petitioner is entitled to due process tolling, an untimely petition must be dismissed. *Id.*

The petitioner filed the instant petition twenty years after the judgments became final. Additionally, the petitioner has failed to allege any facts demonstrating how circumstances “beyond his control” caused his petition for post-conviction relief to be untimely. The instant petition was filed outside the one-year statute of limitations and the petitioner has failed to satisfy the statutory requirements to allow for the tolling of the statute. *See* Tenn. Code Ann. § 40-30-102(a)(b). The judgment of the post-conviction court is, therefore, affirmed.

II. Petitioner’s Request Is Successive to Previously Filed Petitions Under Tenn. Code Ann. § 40-30-102(c)

The Post-Conviction Procedure Act contemplates the filing of only one post-conviction relief petition. Tenn. Code Ann. § 40-30-102(c). “In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed.” *Id.*; *see Taylor v. State*, No. M2016-00933-CCA-R3-PC, 2016 WL 7234039, at *1 (Tenn. Crim. App. Dec. 14, 2016) (trial court’s dismissal was proper because the appellant had received a full hearing and appeal on his original petition).

Here, the post-conviction court concluded that the petitioner had previously filed a post-conviction petition on February 26, 2003. That petition was denied, and this Court affirmed that dismissal. Consequently, the post-conviction court found the instant petition to be an effort to relitigate the petitioner’s prior petitions and, therefore, dismissed it as successive to the previous petition. Upon review, we affirm the decision of the post-conviction court.

III. Petitioner Fails to Assert a Colorable Claim Under Tenn. R. Crim. P. 36.1

Though not directly addressed by the post-conviction court when determining the intent of the petitioner’s instant challenge, we note that the petitioner’s claims could have been treated as a Rule 36.1 Motion to Correct an Illegal Sentence under the Tennessee Rules of Criminal Procedure.

However, a trial court may summarily dismiss a Rule 36.1 motion if it does not state a colorable claim for relief under Rule 36.1. Tenn. R. Crim. P. 36.1(b)(2). Whether a motion states a colorable claim for correction of an illegal sentence under Rule 36.1 is a question of law calling for de novo review. *State v. Wooden*, 478 S.W.3d 585, 589 (Tenn. 2015) (citing *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007)). Rule 36.1(a)(1) provides that the petitioner “may seek to correct an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered.” A sentence is illegal if it is not authorized by the applicable statutes or directly contravenes an applicable statute. Tenn. R. Crim. P. 36.1(a)(2). If the motion states a colorable claim, the trial court shall appoint counsel if the petitioner is indigent and not already represented by counsel and hold a hearing on the motion, unless the Court determines that the motion can be ruled upon without a hearing. Tenn. R. Crim. P. 36.1(b)(3). A “‘colorable claim’ means a claim that, if taken as true and viewed in a light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1.” *Wooden*, 478 S.W.3d at 593. “The movant must attach to the motion a copy of each judgment order at issue and may attach other relevant documents.” Tenn. R. Crim. P. 36.1(a)(1).³

“[F]ew sentencing errors render [a sentence] illegal.” *Wooden*, 478 S.W.3d at 595. Examples of illegal sentences include “sentences imposed pursuant to an inapplicable statutory scheme, sentences designating release eligibility dates where early release is statutorily prohibited, sentences that are ordered to be served concurrently where statutorily required to be served consecutively, and sentences not authorized by any statute for the offenses.” *Id.* However, “attacks on the correctness of the methodology by which a trial court imposed [a] sentence” do not rise to the level of an illegal sentence. *Id.*

Here, the petitioner’s sentence of life imprisonment without the possibility of parole is not illegal as it was an enumerated option under the applicable statute. The petitioner pled guilty to first-degree murder committed during the commission of a felony under Tenn. Code Ann. § 39-13-202(a)(2). The statute in effect at the time of the petitioner’s conviction required that a conviction of this crime must receive a sentence of either “(1) Death; (2) Imprisonment for life without possibility of parole; or (3) Imprisonment for life.” Tenn. Code Ann. § 39-13-202(c). The petitioner’s sentence of imprisonment for life without the possibility of parole was authorized by the applicable statutory statute scheme. As a result, the petitioner cannot demonstrate a fatal error which would render his sentences illegal. Tenn. R. Crim. P. 36.1(a); *Wooden*, 478 S.W.3d at 595. The petitioner is not entitled to relief.

³ The petitioner did attach a copy of each judgment to his Memorandum filed in the post-conviction court on August 22, 2002 as Exhibit D.

Conclusion

Based upon the foregoing authorities and reasoning, we affirm the judgment of the post-conviction court.

J. ROSS DYER, JUDGE