

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
March 7, 2023 Session

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Appellate Courts

MARTRICE THOMAS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 15-03428 Chris Craft, Judge

No. W2022-00887-CCA-R3-PC

A Shelby County jury convicted the Petitioner, Martrice Thomas, of first degree premeditated murder. The Petitioner appealed her conviction, and this court affirmed the trial court’s judgment. *State v. Martrice Thomas*, No. W2017-02489-CCA-R3-CD, 2018 WL 6266277, at *1 (Tenn. Crim. App., Nov. 29, 2018), *perm. app. denied* (Tenn. March 28, 2019). On April 6, 2020, more than a year after the expiration of the statute of limitations, the Petitioner filed a petition for post-conviction relief, alleging that her trial counsel was ineffective. After a hearing, the trial court denied relief, finding that the Petitioner had received the effective assistance of counsel. The Petitioner appeals, maintaining that her trial counsel was ineffective for failing to introduce evidence of Battered Woman Syndrome at trial. Because the post-conviction court treated the petition as timely from the outset of the hearing, thereby preempting any proof the Petitioner may have presented to show that due process considerations required tolling of the statute of limitations, we remand the case for a hearing on the sole issue of the statute of limitations.

Tenn. R. App. P. 3 Appeal as of Right; Case Remanded

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and ROBERT H. MONTGOMERY, JR., JJ., joined.

Phyllis Aluko, Shelby County District Public Defender and Barry W. Kuhn, Assistant Public Defender Memphis, Tennessee, for the appellant, Martrice Thomas.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Karen Cook, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION
I. Facts

On July 16, 2015, a Shelby County grand jury indicted the Petitioner for the first degree premeditated murder of her boyfriend, Willie Harris. Following a jury trial on September 21, 2017, the jury convicted the Petitioner of first degree premeditated murder. The trial court sentenced her to life imprisonment. The Petitioner appealed, arguing that the evidence was insufficient to sustain her conviction. *State v. Martrice Thomas*, 2018 WL 6266277, at *1. After review, this court affirmed the trial court's judgment, finding that the evidence was sufficient to sustain the Petitioner's conviction.

At trial, the State offered proof that the Petitioner and the victim lived together and engaged in repeated physical and verbal arguments during their relationship. On February 16, 2015, the victim made threats that she was going to "kill [the victim], because he playing in my mother f***** house with him and his n*****s and he gave another b**** something for Valentine's Day. I'm going to kill [the victim]. I own a .38 and a .40." *Id.* at 1. The following day, February 17, 2015, she shot and killed the victim. According to witnesses, the victim and the Petitioner were arguing over money and the victim picked up a dog he shared with the Petitioner and threw it against the wall. The Petitioner went into her bedroom and later returned with a gun and shot the victim. The Petitioner testified that she acted in self-defense after the victim attacked her.

On April 6, 2020, one year and nine days after the supreme court denied review, the Petitioner filed a post-conviction petition, claiming that she received the ineffective assistance of counsel. Specifically, she asserted that her trial attorney ("Counsel") was ineffective because he failed to present her treating psychiatrist as a witness at trial. The post-conviction court held a hearing, during which the parties presented testimony from the Petitioner's mother, the Petitioner's psychiatrist, and Counsel.

The Petitioner's mother testified about traumatic events in the Petitioner's life that had caused the Petitioner to be "extremely jumpy" and experience "flashbacks." The Petitioner's psychiatrist testified that he conducted a medication evaluation of the Petitioner on January 22, 2014, and had his last appointment with her on January 21, 2015. The Petitioner's psychiatrist said that he initially diagnosed her with acute stress disorder, but later changed it to post-traumatic stress disorder. He testified that the Petitioner's symptoms were ongoing but that she did improve for a period of time. During this period of improvement, she stopped taking her prescribed medication, and the symptoms returned. He described the Petitioner as agitated and scared all the time due to traumatic experiences, causing her reactions to stressful situations to be less controlled. He explained that a person with a history of trauma was more likely to overreact when faced with a threat. He agreed that the Petitioner's condition would "[p]robably" affect the Petitioner's ability to think rationally in the face of a threat.

The Petitioner testified largely about Counsel's influence on her decision not to testify. Counsel described the Petitioner's case as the "[s]trongest self-defense case [he] had ever seen." Counsel testified that he was aware of the Petitioner's history with traumatic events. He confirmed that his office contacted the Petitioner's psychiatrist but because three or four attorneys worked on the Petitioner's case, he could not say specifically who made the contact. Based upon his interaction with the Petitioner, he did not believe a mental health defense would have been a good strategy. He recalled that his impression of her was that the Petitioner was "nervous" but otherwise presented as well-spoken, logical, rational and that she was helpful in assisting in her defense. Counsel was familiar with the process of presenting a mental health defense but saw no indications warranting such a defense in this case. He did not pursue expert testimony in this case because he felt strategically it would be a poor decision that would allow for the State's expert to testify and potentially introduce evidence adverse to the defense strategy.

After hearing the evidence, the trial court issued a written order denying relief. It is from this judgment that the Petitioner appeals.

II. Analysis

On appeal, the Petitioner asserts that Counsel was ineffective for not presenting evidence of the Petitioner's mental state, specifically Battered Woman Syndrome, and that Counsel failed to adequately investigate Battered Woman Syndrome. The State asserts that the post-conviction court was without authority to hear this case because the Petitioner filed her petition outside the one-year statute of limitations. Alternatively, they argue that Counsel made a strategic decision not to introduce the Petitioner's psychiatrist and the Petitioner cannot show that this decision prejudiced her.

Post-conviction relief is available when a "conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." T.C.A. § 40-30-103 (2018). A petition for post-conviction relief must be filed "within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final . . ." T.C.A. § 40-30-102(a). Here, the one-year statute of limitations expired nine days before the petition was filed.

"[T]he right to file a petition for post-conviction relief . . . shall be extinguished upon the expiration of the limitations period." T.C.A. § 40-30-102(a). "If it plainly appears from the face of the petition, any annexed exhibits or the prior proceedings in the case that the petition was not filed . . . within the time set forth in the statute of limitations, . . . the judge shall enter an order dismissing the petition." T.C.A. § 40-30-106(b). The Post-Conviction Procedure Act is explicit that the one-year statute of limitations "shall not be

tolled for any reasons, including any tolling or saving provision otherwise available at law or equity.” T.C.A. § 40-30-102(a).

The Post-Conviction Procedure Act provides for only three narrow factual circumstances in which the statute of limitations may be tolled, none of which the Petitioner alleges apply to her case. *See* T.C.A. § 40-30-102(b). In addition to the statutory circumstances, our supreme court has held that due process principles may require tolling the statute of limitations. *See Whitehead v. State*, 402 S.W.3d 615, 622-23 (Tenn. 2013). “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.” *Id.* at 631 (citing *Holland v. Florida*, 560 U.S. 631, 649 (2010)).

Our supreme court has held that “it is incumbent upon a petitioner to include allegations of fact in the petition establishing either timely filing or tolling of the statutory period.” *State v. Nix*, 40 S.W.3d 459, 464 (Tenn. 2001) (abrogated on other grounds by *Reid ex rel. Martiniano v. State*, 396 S.W.3d 478, 511-13 (Tenn. 2013)).

The Petitioner’s conviction became final on March 28, 2019. The Petitioner filed her petition for post-conviction relief on April 6, 2020, a year and nine days after the date of the final action of the highest state appellate court to which the appeal was taken. The Petitioner has not alleged any reason for her failing to timely file a post-conviction petition. It is likewise not clear from the scant record or the Petitioner’s appellate brief what caused the delay. The record does not contain the State’s response to the petition. The post-conviction court held a hearing, but there is no mention in the transcripts of the statute of limitations issue. Likewise, the post-conviction court’s written order does not address the untimely filing or whether tolling the post-conviction statute of limitations was warranted.

Tennessee Code Annotated section 40-30-102(a) states that “the one-year statutory period is an element of the right to file the action and is a condition upon its exercise.” Therefore, it is incumbent upon a petitioner to include allegations of fact in the petition establishing either timely filing or tolling of the statutory period. *See* T.C.A. § 40-30-204(e) (“The petitioner shall include allegations of fact supporting each claim for relief set forth in the petition...”). Failure to include sufficient factual allegations of either compliance with the statute or due process tolling will result in dismissal. *See* T.C.A. 40-30-206(b) (“If it plainly appears from the face of the petition, any annexed exhibits or prior proceedings in the case that the petition was not filed . . . within the time set forth in the statute of limitations, . . . the trial judge shall enter an order dismissing the petition.”).

Because the statute of limitations issue was not raised for the post-conviction court’s consideration, the post-conviction court did not make findings regarding the timeliness of

the petition, but instead proceeded as though the petition were timely filed. The timely filing of a petition for post-conviction relief is a jurisdictional prerequisite to the post-conviction court's initial consideration of the claims, as well as a jurisdictional prerequisite to this court's consideration of the Petitioner's claims on appeal. Thus, we remand this case to the post-conviction court for a determination of the timeliness of the petition.

The appellate court clerk shall remove this case from the docket as assigned on March 7, 2023. The post-conviction court shall have sixty days from the filing of this opinion to hold a hearing and issue an order on the timeliness of the petition. No later than twenty days from the date of entry of the post-conviction court's order determining the timeliness of the petition, the petitioner or the State may seek further review of the post-conviction court's timeliness determination or, if determined to be timely filed, the substantive post-conviction claims that are the subject of this appeal. Additional review may be obtained by filing a notice of review in this case, with a copy of the post-conviction court's order attached. The issuance of mandate in this appeal is STAYED pending further order of this court.

III. Conclusion

We remand this matter to the post-conviction court for further consideration of the statute of limitations and whether due process requires tolling the limitations period.

ROBERT W. WEDEMEYER, JUDGE