

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs September 4, 2019

FILED

11/08/2019

Clerk of the
Appellate Courts

CHRISTOPHER JONES v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County

No. 13-06162

J. Robert Carter, Jr., Judge

No. W2019-00053-CCA-R3-PC

Petitioner, Christopher Stephen Jones, was convicted by a jury of first degree murder and abuse of a corpse, for which he received a life sentence. His convictions were affirmed on direct appeal by this Court. *State v. Christopher Jones*, No. W2015-01028-CCA-R3-CD, 2017 WL 192146, at *1 (Tenn. Crim. App. Jan. 17, 2017), *no perm. app. filed*. Petitioner sought post-conviction relief on the basis of ineffective assistance of counsel. The post-conviction court denied relief after a hearing. Petitioner appealed. After a review, we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT L. HOLLOWAY, JR., JJ., joined.

Jason Matthews, Memphis, Tennessee, for the appellant, Christopher Stephen Jones.

Herbert H. Slatery III, Attorney General and Reporter; Katharine K. Decker, Assistant Attorney General; Charme P. Allen, District Attorney General; and Glen Baity and Leslie Byrd, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Petitioner was convicted of the 2013 killing of his estranged wife, taking her body to a remote location, and setting it on fire. *State v. Christopher Jones*, No. W2015-01028-CCA-R3-CD, 2017 WL 192146, at *1 (Tenn. Crim. App. Jan. 17, 2017), *no perm. app. filed*. On appeal, this Court affirmed Petitioner's convictions. *Id.* Petitioner executed a pro se petition for post-conviction relief on January 18, 2018, in which he claimed that the "[i]nstitution lock down on 1-16-18 and 1-17-18 made notary, copy and

mail services unavailable.”¹ The pro se petition is stamped by a notary on January 18, 2018. However, the petition is not file stamped by the Shelby County Criminal Court. The petition alleges that he received ineffective assistance of counsel at trial and on appeal.

The post-conviction court entered an order on February 16, 2018, finding that the petition “appears to have been timely filed.” Counsel was appointed, and an amended petition for relief was filed. The amended petition named specific instances of ineffective assistance of counsel, including: (1) trial counsel’s failure to order a mental evaluation; (2) trial counsel’s failure to raise an insanity defense; (3) trial counsel’s failure to interview Petitioner’s children; (4) trial counsel’s failure to subpoena witnesses; (5) trial counsel’s effective denial of Petitioner’s right to testify by intimidation; (6) trial counsel’s failure to object to the introduction of bloodwork; (7) trial counsel’s failure to ensure a speedy trial; (8) trial counsel’s failure to challenge the cadaver dog’s qualifications; (9) appellate counsel’s failure to “raise any of these issues”; (10) trial counsel’s failure to address the writ of mandamus filed by Petitioner; (11) trial counsel’s failure to challenge the indictment; (12) trial counsel’s failure to investigate the witnesses at the Christmas party; (13) trial counsel’s failure to use potentially exculpatory evidence from a mental evaluation; (14) trial counsel’s failure to challenge allegations of perjury at the police department; (15) trial counsel’s failure to certify Petitioner as an expert; (16) trial counsel’s failure to challenge the chain of custody with regard to the video; (17) trial counsel’s failure to establish that Petitioner had no knowledge or reason to believe that the victim was going to appear or testify at a divorce proceeding; (18) the trial court’s failure to suppress the video; (19) the trial court’s failure to investigate a potential conflict of interest between trial counsel and Petitioner; and (20) the appellate court’s ruling that evidence of concealing a crime after the fact can be used as evidence of an intent to commit the crime itself. The State did not raise the timeliness of the petition before or at the hearing. The post-conviction court ultimately denied the petition after an evidentiary hearing, and this appeal followed.

Analysis

On appeal, Petitioner argues that the post-conviction court improperly denied relief. Specifically, Petitioner claims that he “wanted counsel to present an insanity defense” and that he “needed his children to testify” in order to establish his mental state at the time of the crime. Petitioner also argues that trial counsel failed to call “the people at the Christmas party” to testify at trial. The State initially argues that Petitioner has

¹ This was in response to question 11 on the Appendix A, Form Petition, provided by Tenn. Sup. Ct. R. 28: “If more than one (1) year has passed since the date of the final action on your appeal by the state appellate courts[,] state why the statute of limitations should not bar your claim.”

waived his issues on appeal by failing to submit a transcript of the post-conviction evidentiary hearing.² Additionally, the State argues that the petition for post-conviction relief was untimely but, curiously, does not request a dismissal of the appeal for want of jurisdiction. Finally, the State insists that Petitioner failed to show clear and convincing evidence that his counsel were deficient or that he was prejudiced by their actions.

As an initial matter, we must address the timeliness of Petitioner's pro se petition for post-conviction relief. Post-conviction relief is available for any conviction or sentence that 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. However, to obtain relief, the post-conviction petition must be filed within one year of the final action of the highest state appellate court to which an appeal is taken. T.C.A. § 40-30-102(a); *see also Williams v. State*, 44 S.W.3d 464, 468 (Tenn. 2001). The statute emphasizes that "[t]ime is of the essence of the right to file a petition for post-conviction relief" and that "the one-year limitations period is an element of the right to file such an action and is a condition upon its exercise." T.C.A. § 40-30-102(a).

"Given the post-conviction statute's language conferring jurisdictional import to the timely filing of a petition, it is essential that the question of timeliness be resolved before any adjudication on the merits of the petitioner's claims may properly occur." *Antonio L. Saulsberry v. State*, No. W2002-02538-CCA-R3-PC, 2004 WL 239767, at *1 (Tenn. Crim. App. Feb. 9, 2004), *perm. app. denied* (Tenn. June 1, 2004). In other words, if the trial court did not have jurisdiction to consider a petition for post-conviction relief because it was untimely, and due process did not require the tolling of the statute of limitations, we must dismiss the appeal even if the State failed to raise the statute of limitations at the trial level, and the trial court treated the petition as timely. *Stephen Willard Greene v. State*, No. E2005-02769-CCA-R3-PC, 2007 WL 1215022, at *5 (Tenn. Crim. App. Apr. 25, 2007), *no perm. app. filed*.

There are three exceptions set forth in the Post-Conviction Procedure Act that allow a petition for post-conviction relief to be filed outside the one-year statute of limitations. T.C.A. § 40-30-102(b). However, this case does not fall within those three exceptions. Additionally, 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*, 44 S.W.3d at 468. When a petitioner fails to timely file a petition for post-conviction relief due to circumstances outside of his control, due process requires tolling the statute of limitations. *Id.* at 468-69. "A petitioner is entitled to due process

² Petitioner later remedied this deficiency by supplementing the record with the transcript of the hearing.

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) (citing *Holland v. Florida*, 560 U.S. 631, 649 (2010)).

Petitioner had one year from January 17, 2017, in which to file his petition. Therefore, he had until January 17, 2018, to file his petition for post-conviction relief. We acknowledge that the “mailbox rule” found in Rule 49(d)(1) of the Tennessee Rules of Criminal Procedure provides as follows:

If a paper required or permitted to be filed pursuant to the rules of criminal procedure is prepared by or on behalf of a pro se litigant incarcerated in a correctional facility and is not received by the court clerk until after the deadline for filing, the filing is timely if the paper was delivered to the appropriate individual at the correctional facility within the time set for filing. This provision also applies to service of papers by such litigants pursuant to the rules of criminal procedure.

Tenn. R. Crim. P. 49(d)(1). Subsection (d)(3) of the rule provides that “[w]hen timeliness of filing or service is an issue, the burden is on the pro se litigant to establish compliance with this provision.” Tenn. R. Crim. P. 49(d)(3). Petitioner has not met his burden. He provided no proof, other than an assertion on the petition for relief that he was on lockdown and unable to access the mail or notary within the jail until January 18, 2018. There is nothing in the petition that explains the restrictions placed on Petitioner because of the lockdown other than the claim by Petitioner that mail and notary were unavailable during the lockdown. Because there is not enough evidence in the record to justify due process tolling of the statute of limitations, the petition, delivered to the prison authorities on January 18, 2018, was untimely by one day. Accordingly, the petition for post-conviction relief should be dismissed, and we have no jurisdiction to review the merits of Petitioner’s claims. *See, e.g., Charles Godspower v. State*, No. M2017-01696-CCA-R3-PC, 2018 WL 5046531, at *6 (Tenn. Crim. App. Oct. 17, 2018), *perm. app. denied* (Tenn. Feb. 21, 2019); *Carl Bond v. State*, No. W2016-00691-CCA-R3-PC, 2017 WL 3530852, at *2 (Tenn. Crim. App. Aug. 16, 2017), *no perm. app. filed*; *Jonathan Adams v. State*, No. E2012-00287-CCA-R3-PC, 2013 WL 1187654, at *3 (Tenn. Crim. App. Mar. 21, 2013), *perm. app. denied* (Tenn. Aug. 14, 2013); *Darren Brown v. State*, No. W2012-02584-CCA-MR3-PC, 2013 WL 6405736, at *3-4 (Tenn. Crim. App. Dec. 5, 2013), *perm. app. denied* (Tenn. May 14, 2014); *Stephen Willard Greene v. State*, No. E2005-02769-CCA-R3-PC, 2007 WL 1215022, at *5 (Tenn. Crim. App. Apr. 25, 2007), *no perm app. filed*; *but see Ugenio Dejesus Ruby-Ruiz v. State*, No. M2017-00834-CCA-R3-PC, 2018 WL 1614054, at *3 (Tenn. Crim. App. Apr. 3, 2018) (remanding case to

post-conviction court for determination of whether due process tolling applied where this Court was unable to determine such from the record), *no perm. app. filed*.

Conclusion

For the foregoing reasons, the appeal is dismissed.

TIMOTHY L. EASTER, JUDGE