

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs October 7, 2014

**JARVIS TAYLOR v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**No. 02-08615     John Wheeler Campbell, Judge**

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**No. W2014-00683-CCA-R3-PC - Filed November 20, 2014**

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Petitioner, Jarvis Taylor, was convicted of first degree felony murder and especially aggravated robbery in Shelby County. His convictions and effective life sentence were affirmed on direct appeal. *See Jarvis Taylor v. State*, W2005-01966-CCA-R3-CD, 2006 WL 2242096, at \*1 (Tenn. Crim. App. Aug. 4, 2006), *perm. app. denied* (Tenn. Oct 30, 2006). In January 2014, over seven years after Petitioner's convictions were affirmed on appeal, Petitioner sought post-conviction relief. The trial court dismissed the petition as untimely. Petitioner appeals from the Shelby County Criminal Court's summary dismissal of his petition for post-conviction relief. We determine that the post-conviction court properly dismissed the petition without an evidentiary hearing where there were no grounds upon which to toll the statute of limitations. Accordingly, the judgment of the post-conviction court is affirmed.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and CAMILLE R. MCMULLEN, JJ., joined.

Jarvis Taylor, Henning, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Amy P. Weirich, District Attorney General; Kirby Mays, Assistant District Attorney General, for the respondent, State of Tennessee.

**OPINION**

### *Factual Background*

Petitioner was convicted of first degree felony murder and especially aggravated robbery based largely on the testimony of his friend, Antonio Watkins, to whom Petitioner confessed the crime. *See Jarvis Taylor v. State*, 2006 WL 2242096, at \*4. His convictions and effective life sentence were affirmed on direct appeal. *Id.* The Tennessee Supreme Court denied his permission to appeal.

On January 22, 2014, Petitioner filed a petition for post-conviction relief in which he alleged that he received ineffective assistance of counsel. Petitioner acknowledged that the petition was untimely but argued that he was entitled to due process tolling because he had been in maximum security segregation from March 4, 2007, to May 24, 2012, during which time he had no access to the law library, and because he was unaware of his post-conviction rights after the withdrawal of his appellate counsel. The post-conviction court summarily dismissed the petition for failure to assert a colorable claim because “the fact that the [P]etitioner was in segregation a[t] the Tennessee Department of Corrections does not prevent the filing of a petition for post-conviction relief,” and Petitioner “has not stated grounds that would allow this [c]ourt to ignore the one-year statute of limitation contained in T.C.A. § 40-30-102(a).” Petitioner appeals.

### *Analysis*

On appeal, Petitioner insists that the statute of limitations should be tolled because: (1) his appellate counsel withdrew from the case and failed to inform him of his right to seek post-conviction relief; and (2) Petitioner was placed on maximum security segregation “due to unfortunate circumstances outside [his] control” shortly after the conclusion of his direct appeal. We disagree. Additionally, Petitioner asks this Court to extend the holding in *Frazier v. State*, 303 S.W.3d 674 (Tenn. 2010),<sup>1</sup> to require courts to inform defendants of post-conviction procedure “as a matter of fundamental fairness.” We decline to do so.

Under the Post-Conviction Procedure Act, relief is available when a conviction “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. A petition for post-conviction relief must be filed within one year of the date on which the judgment

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<sup>1</sup>Petitioner mischaracterizes the holding of *Frazier* as requiring counsel to inform defendant of the right to pursue his direct appeal. *Frazier* actually held that there is an implicit right to conflict-free counsel during post-conviction proceedings and that the trial court has a duty to conduct an inquiry when a conflict of interest is apparent. 303 S.W.3d at 685.

became final if no direct appeal was taken. T.C.A. § 40-30-102(a). Our legislature emphasized the fact that “[t]ime is of the essence of the right to file a petition for post-conviction relief,” *id.*, and provided only three narrow exceptions to the statute of limitations: (1) a new constitutional right with retrospective application; (2) new scientific evidence establishing actual innocence; and (3) the invalidation of convictions underlying an enhanced sentence. T.C.A. § 40-30-102(b).

However, the right to due process may necessitate tolling the statute of limitations in certain circumstances outside of the enumerated statutory exceptions. *See Seals v. State*, 23 S.W.3d 272 (Tenn. 2000); *Burford v. State*, 845 S.W.2d 204 (Tenn. 1992). Our supreme court has held:

[B]efore a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that a potential litigant be provided an opportunity for “presentation of claims at a meaningful time and in a meaningful manner.” The test is “whether the time period provides an applicant a reasonable opportunity to have the claimed issue heard and determined.”

*Seals*, 23 S.W.3d at 277-78 (quoting *Burford*, 845 S.W.2d at 207). “Whether due process considerations require tolling of a statute of limitations is a mixed question of law and fact, which we review de novo with no presumption of correctness.” *Smith v. State*, 357 S.W.3d 322, 355 (Tenn. 2011) (quoting *Harris v. State*, 301 S.W.3d 141, 145 (Tenn. 2010)).

As this Court has previously explained, “due process serves to toll the post-conviction statute of limitations for petitioners who face circumstances beyond their control . . . which preclude them from actively raising their post-conviction claims.” *Crystle D. Rutherford v. State*, No. M2013-01575-CCA-R3-PC, 2014 WL 1669960, at \*2 (Tenn. Crim. App. Apr. 25, 2014) (citing *Williams v. State*, 44 S.W.3d 464, 469 (Tenn. 2001)). Our supreme court has identified three circumstances in which due process requires tolling the post-conviction statute of limitations: (1) when claims for relief arise after the expiration of the statute of limitations, *see Sands v. State*, 903 S.W.2d 297, 301 (Tenn. 1995); (2) when a petitioner’s mental incompetence prevents him from complying with the statute’s deadline, *see Seals*, 23 S.W.3d at 279; and (3) when attorney misconduct or abandonment prevented the petitioner from filing a post-conviction petition within the statute of limitations, *see Whitehead v. State*, 402 S.W.3d 615, 631 (Tenn. 2013).

As this Court has previously stated, “a hearing on due process concerns is not required nor intended every time a petitioner alleges that his untimely filing is due to his attorney’s conduct.” *Joseph Nelson v. State*, No. W2012-02234-CCA-R3-PC, 2013 WL 6001955, at

\*3 (Tenn. Crim. App. Nov. 12, 2013) (citing *Craig Robert Nunn v. State*, No. M2005-01404-CCA-R3-PC, 2006 WL 680900, at \*5 (Tenn. Crim. App. Mar. 17, 2006)). To toll the statute of limitations for attorney misconduct or abandonment, a petitioner must make “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*, 402 S.W.3d at 631 (citing *Holland v. Florida*, 560 U.S. 631, 649 (2010)). The extraordinary circumstance prong “is met when the [petitioner’s] attorney of record abandons the [petitioner] or acts in a way directly adverse to the [petitioner’s] interests, such as by actively lying or otherwise misleading the [petitioner] to believe things about his or her case that are not true.” *Id.*

“Short of active misrepresentation, however, [the supreme court has] never held that trial or appellate counsel’s inadvertent or negligent failure to inform his or her client of the right to file a post-conviction petition constitutes ineffective assistance of counsel” sufficient to toll the statute of limitations in post-conviction proceedings. *Smith*, 357 S.W.3d at 358; *see also Williams*, 44 S.W.3d at 468 n.7. This Court has consistently held that “a petitioner’s personal ignorance of post-conviction procedures, ‘even when alleged to stem from an attorney’s negligent failure to render advice to the petitioner, does not toll the running of the statute’ of limitations.” *Joshua Jacobs v. State*, No. M2009-02265-CCA-R3-PC, 2010 WL 3582493, at \*3 (Tenn. Crim. App. Sept. 15, 2010), *perm. app. dismissed* (Tenn. Jan. 20, 2011) (quoting *State v. Phillips*, 904 S.W.2d 123, 124 (Tenn. Crim. App. 1995)); *see also Joseph Nelson*, 2013 WL 6001955; *James Wesley Osborne v. State*, No. E2010-01548-CCA-R3-PC, 2012 WL 953102 (Tenn. Crim. App. Mar. 20, 2012), *perm. app. denied* (Tenn. June 20, 2012); *Leah Joy Ward v. State*, No. W2009-00088-CCA-R3-PC, 2010 WL 481211 (Tenn. Crim. App. Feb. 11, 2010), *perm. app. denied* (Tenn. Sept. 7, 2010); *Kimberly Ruth Brown v. State*, No. M2007-00128-CCA-R3-PC, 2008 WL 886302 (Tenn. Crim. App. Apr. 2, 2008). As one panel of this Court put it, “the law is well settled that mere ignorance of the law concerning the statute of limitations, or even the existence of the statute of limitations, by whatever means (other than mental incompetence), does not rise to the status of being violative of constitutional due process.” *Guillermo Matiaz Juan v. State*, No. 03C01-9708-CR-00318, 1999 WL 76453, at \*2 (Tenn. Crim. App. Feb. 18, 1999), *perm. app. denied* (Tenn. July 12, 1999).

Moreover, at the conclusion of the majority’s opinion in *Whitehead*, our supreme court stated,

As we recently noted, “[i]n 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 at 358. This observation holds true today.

402 S.W.3d at 634. This Court has determined it was not a situation beyond a prisoner's control when the facility "where he was incarcerated was on 'Administrative Lock-down' the last few days before the statute of limitations ran, and/or because he received, second hand, incorrect information *not* from an attorney, but from an employee of the appellate court clerk's office." *Darren Brown v. State*, No. W2012-02584-CCA-MR3-PC, 2013 WL 6405736, at \*3 (Tenn. Crim. App. Dec. 5, 2013), *perm. app. denied* (Tenn. May 14, 2014).

We find no merit in Petitioner's claim that the statute of limitations should be tolled for attorney abandonment. Petitioner waited more than six years after the statute of limitations expired to file his petition for post-conviction relief, and he has made no showing that he was making any attempts to diligently pursue his rights during this time. Additionally, we are unpersuaded by Petitioner's argument that his own administrative segregation should serve as a valid basis to toll the statute of limitations in post-conviction proceedings. Even though Petitioner insists that he was not involved in the "gang-related assault" that prompted his segregation for over five years, he does not explain or offer an excuse for failing to file a post-conviction petition in the seven months prior to his segregation.

#### *Conclusion*

After a thorough review of the record, we affirm the judgment of the post-conviction court.

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TIMOTHY L. EASTER, JUDGE