

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 2, 2022

FILED
09/09/2022
Clerk of the
Appellate Courts

JOHNNY LORENZO WADE v. STATE OF TENNESSEE

Appeal from the Circuit Court for Madison County
No. C-19-253 Kyle C. Atkins, Judge

No. W2021-01419-CCA-R3-PC

After being convicted of first degree murder, felony murder, especially aggravated robbery, attempted first degree murder, and aggravated assault, Johnny Lorenzo Wade, Petitioner, was sentenced to an effective sentence of life plus 40 years. *State v. Johnny Lorenzo Wade*, No. W2017-00933-CCA-R3-CD, 2018 WL 3414471, at *1 (Tenn. Crim. App. Apr. 3, 2018), *perm. app. denied* (Tenn. Nov. 15, 2018). Petitioner’s convictions and sentences were affirmed on direct appeal, and Petitioner subsequently sought post-conviction relief. He now appeals from the dismissal of his petition for post-conviction relief in which he alleged ineffective assistance of counsel, among other issues. Because Petitioner filed an untimely notice of appeal and the interests of justice do not merit waiver of the timely filing of the notice of appeal, 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 ROBERT W. WEDEMEYER, J., joined. JOHN EVERETT WILLIAMS, P.J., not participating.¹

William Johnson Milam, Jackson, Tennessee, for the appellant, Johnny Lorenzo Wade.

Herbert H. Slatery III, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Jody S. Pickens, District Attorney General; and Al Earls, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

¹ Judge Williams, the Presiding Judge of the Court of Criminal Appeals, died on September 2, 2022. The members of this panel of the Court acknowledge Judge Williams’s steadfast leadership, sharp wit, and overall positive influence on the judiciary during his many years of service to Tennessee. He will be greatly missed by all of his colleagues.

Petitioner was convicted of one count of first degree premeditated murder, two counts of first degree felony murder, two counts of especially aggravated robbery, one count of attempted first degree murder, and one count of aggravated assault, for his involvement in a home invasion and robbery. *Id.* Petitioner’s convictions and sentences were affirmed on direct appeal and the supreme court denied permission to appeal on Nov. 15, 2018. *Id.*

On October 8, 2019, Petitioner filed a timely pro se petition for post-conviction relief. By preliminary order, entered on October 9, 2019, the post-conviction court found the petition presented a colorable claim and appointed post-conviction counsel to represent Petitioner. After the State filed a response, an evidentiary hearing was conducted on October 12, 2021.

Following the hearing, the post-conviction court denied relief. In a written order, the post-conviction court “dismissed” the petition on October 13, 2021.

Petitioner filed a notice of appeal on December 1, 2021.

Analysis

Petitioner’s notice of appeal was filed 49 days after the post-conviction court entered its order. As noted by the State, Petitioner has failed to provide an explanation for his untimely filing or ask for a waiver of the timely filing requirement. Even after having an opportunity to reply to the State’s argument that this Court should dismiss Petitioner’s untimely appeal, Petitioner did not. There is simply no basis in the record which this Court may find that the “interests of justice” merit a waiver of the untimely filed notice of appeal. *See* Tenn. R. App. P. 4(a); *State v. Rockwell*, 280 S.W.3d 212, 214 (Tenn. Crim. App. 2007) (“If this [C]ourt were to summarily grant a waiver whenever confronted with untimely notices, the thirty-day requirement of Tennessee Rule of Appellate Procedure 4(a) would be rendered a legal fiction.”). Consequently, the appeal is dismissed.

Conclusion

Because the notice of appeal is untimely, and the interests of justice do not merit a waiver of the untimely filed notice of appeal, we dismiss the appeal.

TIMOTHY L. EASTER, JUDGE