

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

AUGUST 1996 SESSION

<p>FILED</p> <p>August 30, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

<p>GREGORY LEVERETT, Appellant. V. STATE OF TENNESSEE, Appellee.</p>	<p>)) C.C.A. No. 03C01-9511-CR-00362)) Hamilton County)) Honorable Douglas A. Meyer, Judge)) (Post-Conviction: Timeliness of Petition)))</p>
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FOR THE APPELLANT:

Gregory Leverett, Pro Se
N.W.C.C.
Route 1, Box 660
Tiptonville, TN 38079

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter

Eugene J. Honea
Assistant Attorney General
Criminal Justice Division
450 James Robertson Parkway
Nashville, TN 37243-0493

Gary D. Gerbitz
District Attorney General (Former)

Yolanda Mitchell
Asst. Dist. Attorney General
600 Market Street, Courts Bldg.
Chattanooga, TN 37402

OPINION FILED: _____

REVERSED AND REMANDED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Gregory Leverett, pled guilty to rape. He was sentenced to twelve years incarceration. He petitioned for post-conviction relief. The petition was dismissed as untimely. He now appeals that dismissal. We respectfully reverse and remand for an evidentiary hearing.

The appellant's judgment became final on November 16, 1993. He filed his pro se petition for post-conviction relief in August of 1995. The trial court apparently ruled that the 1995 Post-Conviction Procedure Act mandated that the appellant's petition be filed on or before November of 1994.

The 1995 Post-Conviction Procedure Act governs petitions for post-conviction relief filed after the effective date of May 10, 1995. Tenn. Code Ann. § 40-30-201 (1995 Supp.) Compiler's Notes. Petitions governed by the act must be filed within one year of the date of final judgment. Id. The act, however, also provides that petitioners will be afforded at least one year from the effective date within which to file a petition. Id.

Although the appellant had, under the prior act, until November 1996 to file a petition for post-conviction relief, he was provided legislative notice that the 1995 act mandated that he file his petition prior to May of 1996. He complied with this requirement. We, therefore, find that under the circumstances of this case, the appellant's petition was timely.¹ The case is reversed and remanded for an evidentiary hearing to be conducted in conformity with both the 1995 Act and Tenn. R. Supr. Ct., Rule 28.

PAUL G. SUMMERS, Judge

¹The state concedes that the trial court erred in dismissing the appellant's petition as untimely. The state, however, maintains that the appellant's pro se petition should be dismissed because it is inartfully drafted or fails to completely set forth a claim.

The appellant was not afforded the benefit of counsel. Pursuant to Tenn. R. Supr. Ct. Rule 28 § 6(4)(b), "[n]o pro se petition shall be dismissed for failure to follow prescribed form until the court has given the petitioner a reasonable opportunity to amend the petition with the assistance of counsel." The appellant is, therefore, entitled to have the assistance of counsel to amend his complaint.

CONCUR:

JOE B. JONES, Presiding Judge

DAVID G. HAYES, Judge