

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER SESSION, 1995

**FILED**  
November 2, 1995  
Cecil Crowson, Jr.  
Appellate Court Clerk

ASHAD RASHAD )  
ABDULLAH ALI )  
Appellant, )

C.C.A. NO. 01C01-9406-CC-00233

VS. )

LINCOLN COUNTY

STATE OF TENNESSEE, )

HON. F. LEE RUSSELL  
JUDGE

Appellee. )

(Post-Conviction)

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE  
CIRCUIT COURT OF LINCOLN COUNTY

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED \_\_\_\_\_

AFFIRMED

DAVID H. WELLES, JUDGE

# OPINION

The Petitioner appeals the dismissal of his post-conviction petition. His petition attacked convictions entered on June 25, 1985 on guilty pleas for aggravated rape, armed robbery and first degree burglary. The Petitioner initially filed a pro se petition for writ of habeas corpus in March of 1991. The trial court chose to also treat the petition for a writ of habeas corpus as a petition for post-conviction relief. The court dismissed the petition because it was time-barred as a post-conviction petition and it was without merit as a petition for writ of habeas corpus. We affirm the decision of the trial court.

The Petitioner argues two issues in this appeal. The first issue is whether the trial court erred in treating the writ of habeas corpus as a petition for post-conviction relief. The second issue is whether the trial court erred in dismissing the petition without holding an evidentiary hearing.

The Petitioner alleged several things in his pro se petition for writ of habeas corpus. He contended that the grand jury, which indicted him for the offenses he pleaded guilty to, returned the indictment for racially motivated reasons. He also alleged that the grand jury was bribed to indict him. The Petitioner complained that he was denied due process of law because he did not receive a preliminary hearing before being bound over to the grand jury. He also alleged that there was insufficient evidence to convict him of the aggravated rape charge because the forensic tests came back with an inconclusive result. He argued that the ten year sentence for the burglary had been "flattened" after the sentence reduction credits he earned while incarcerated in the penitentiary were applied. The Petitioner argued that because the rape conviction could not stand and because he had served six years on his ten-year sentence for

burglary and earned the reduction credits he was being unlawfully and illegally restrained.

The Tennessee Supreme Court has stated:

[I]t is well settled in this state that the writ of habeas corpus, codified at T.C.A. §§ 29-21-101 et seq., will issue only in the case of a void judgment or to free a prisoner held in custody after his term of imprisonment has expired. State ex rel. Hall v. Meadows, 215 Tenn. 668, 389 S.W.2d 256, 259 (1965). Unlike the post-conviction petition, the purpose of a habeas corpus petition is to contest void and not merely voidable judgments. See State ex rel. Newsom v. Henderson, 221 Tenn. 24, 424 S.W.2d 186, 189 (1968). A petitioner cannot collaterally attack a facially valid conviction in a habeas corpus proceeding. State ex rel. Holbrook v. Bomar, 211 Tenn. 243, 364 S.W.2d 887, 888 (1963).

Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). The issues presented by the Petitioner in his petition for a writ of habeas corpus are not issues which may be resolved by a petition for a writ of habeas corpus. Even if true, the allegations do not demonstrate that the judgments of conviction of the Petitioner are void, nor do they demonstrate that he is being held after his term of imprisonment has expired.

"A petition for habeas corpus may be treated as a petition under this chapter when the relief and procedure authorized by this chapter appear adequate and appropriate, notwithstanding anything to the contrary in title 29, chapter 21, or any other statute." Tenn. Code Ann. § 40-30-108. The trial court properly treated the Petitioner's petition for a writ of habeas corpus as a petition for post-conviction relief.

The Petitioner's second issue is whether the trial court erred in dismissing the post-conviction petition without an evidentiary hearing. The trial court dismissed the Petitioner's petition without an evidentiary hearing because it was barred by the statute of limitations. A petition for post-conviction relief must be filed within three years of the

date of the final action of the highest state appellate court to which an appeal is taken. Tenn. Code Ann. § 40-30-102. The statute of limitations for petitioners who were in custody when the statute became effective began to run July 1, 1986. Abston v. State, 749 S.W.2d 487, 488 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1988). The petitioner in the case sub judice pleaded guilty on July 25, 1985. There was no appeal. Therefore, the statute of limitations ran in 1989. The dismissal without an evidentiary hearing of a post-conviction petition which is barred by the statute of limitations is proper. Harden v. State, 873 S.W.2d 2, 3 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1993).

The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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PAUL G. SUMMERS, JUDGE