

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER SESSION, 1995

FILED
February 8, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

DEWEY SCOTT FRAZIER)

Appellant,)

VS.)

STATE OF TENNESSEE,)

Appellee.)

C.C.A. NO. 03C01-9505-CR-00142

SULLIVAN COUNTY

HON. FRANK L. SLAUGHTER
JUDGE

(Post Conviction Relief)

ON APPEAL FROM THE JUDGMENT OF THE
CRIMINAL COURT OF SULLIVAN COUNTY

FOR THE APPELLANT:

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AFFIRMED

OPINION FILED _____

JERRY L. SMITH, JUDGE

OPINION

In this pro se case the Appellant, Dewey Scott Frazier, appeals the summary dismissal of the latest in a long line of post-conviction relief petitions filed by Appellant*. The trial court dismissed the petition as barred under the three year statute of limitations in Tenn. Code Ann. § 40-30-102 and on waiver grounds. See Tenn. Code Ann. § 40-30-112. Because the petition fails to present any legitimate exception to the statute of limitations for post-conviction petitions, we affirm the dismissal.

Tenn. Code Ann. § 40-30-102 provides that a post-conviction petition 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" or be time barred. However, in Burford V. State, 845 S.W.2d 204 (Tenn. 1992), the Tennessee Supreme Court created an exception to this statute of limitations. In Burford the Court held that a post-conviction petition may be filed beyond the statute of limitations if the petition presents grounds based on a constitutional right discovered by the courts after expiration of the relevant three-year period, and the newly discovered constitutional right requires retroactive application.

In his petition the Appellant, who was convicted of state bank robbery charges and sentenced as a habitual criminal in 1976, claims the Burford exception to the statute of limitations applies to him. He bases this argument on the United States Supreme Court case of Beecham v. United States, ___ U.S. ___, 114 S. Ct. 1669, 128 L. Ed. 2d 383 (1994). Beecham involved a federal statute which criminalizes possession of a firearm by a convicted felon. However, a conviction which has been

*For example, see Frazier v. State, No. 03C01-9302-CR-00042, 1993 WL 462082, at *1 (Tenn. Crim. App. Nov. 10, 1993) (in which Petitioner's petition for writ of habeas corpus was "more properly treated as a petition for post-conviction relief"); Frazier v. State, No. 03C01-9212-CR-00416, 1993 WL 358466 (Tenn. Crim. App. Sept. 14, 1993) ; Frazier v. State, No. 696, 1986 WL 7804 (Tenn. Crim. App. July 11, 1986).

"expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction", for purposes of the statute. 18 U.S.C. § 921 (a)(20).

The defendants in Beecham, convicted under the federal statute, claimed that their prior federal convictions could not be used against them because their civil rights had been restored pursuant to state law. The court held as a matter of federal statutory interpretation that a restoration of civil rights for federal felons must be pursuant to federal law. A state restoration of civil rights will not suffice to claim the exemption of 18 U.S.C. § 921 (a)(20) in the case of federal felonies.

Despite the Appellant's claim that the holding in Beecham, as a matter of constitutional law, invalidates the prior convictions used to enhance Appellant's sentence to habitual criminal status, it is clear that there is not a new constitutional right announced in Beecham. This case merely deals with federal statutory interpretation and as such offers Appellant no relief from the statute of limitations for post-conviction petitions.

In view of this holding, we reject the Appellant's contention that appointment of counsel and an evidentiary hearing were necessary to ensure the Appellant's constitutional or statutory rights. When a competently drafted post-conviction petition conclusively shows that the petitioner is not entitled to relief, it may be dismissed without appointment of counsel and without an evidentiary hearing. Swanson v. State, 749 S.W.2d 731 (Tenn. 1988).

Accordingly the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

WILLIAM M. BARKER, JUDGE