

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1996 SESSION

FILED
January 28, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STEPHEN KOPROWSKI,)
)
Appellant)
)
V.)
)
STATE OF TENNESSEE,)
)
Appellee.)

No. 03C01-9511-CC-00365

ANDERSON COUNTY

HON. JAMES B. SCOTT, JR.,
JUDGE

(Post-Conviction)

STEVE KOPROWSKI,)
)
Appellant)
)
V.)
)
STATE OF TENNESSEE,)
)
Appellee.)

No. 03C01-9511-CR-00378

KNOX COUNTY

HON. RAY L. JENKINS,
JUDGE

(Post-Conviction)

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OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

OPINION

In this consolidated appeal, Stephen Koprowski, appeals the dismissal of his post-conviction petitions filed in the Criminal Court of Knox County and the Circuit Court of Anderson County. Both of the trial courts summarily dismissed appellant's petitions because they were filed outside the statute of limitations. Finding no error in the trial courts' rulings, we affirm the dismissal of the petitions.

Appellant's only issue on appeal is whether his petitions are barred by the statute of limitations. Therefore, a brief procedural history is necessary to evaluate these claims.

On March 11, 1988, the appellant pled guilty in the Criminal Court of Knox County to one count of the sale of cocaine. As a result, he was sentenced to five (5) years in the penitentiary as a Range I offender and fined \$1,000. The trial court suspended the sentence and placed appellant under the supervision of the CAP program for five (5) years. On May 11, 1988, appellant pled guilty in the Circuit Court for Anderson County to manufacturing marijuana and received eleven (11) months, twenty-nine (29) days and was placed on probation for this offense. Appellant has fully served both sentences.¹

More recently, appellant faced charges in federal court and his two prior convictions in Knox and Anderson Counties were to be used to enhance that federal

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We note from the Knox County Criminal Court record that appellant's five (5) year sentence was enhanced to ten (10) years by order of the court on August 11, 1992. On October 1, 1993, he was given credit for serving five (5) years and 204 days jail time. An order entered later in the record corrects appellant's enhanced sentence of ten (10) years to five (5) years and recognizes that his sentence was fully served and had expired. Contrary to appellant's contention, these procedural matters have no bearing upon the statute of limitations applicable to his petition for post-conviction relief.

Moreover, we note that although appellant has fully served both sentences, he is not precluded from bringing these post-conviction petitions. See Albert v. State, 813 S.W.2d 426 (Tenn. 1991) and State v. McCraw, 551 S.W.2d 692 (Tenn. 1977) (holding that mere service of a sentence does not prevent collateral attack on the conviction).

sentence. As a result, appellant filed two post-conviction petitions in August of 1995 contesting the validity of his 1988 guilty pleas in Knox and Anderson Counties. He alleges that at the time of those guilty pleas, he was not informed of the full panoply of constitutional rights as required by State v. Mackey, 553 S.W.2d 337 (Tenn. 1977). The trial court in each county summarily dismissed appellant's petitions as barred by the statute of limitations.

Appellant's 1988 convictions were governed by the now-repealed Post-Conviction Procedure Act, which was effective between July 1, 1986 and May 10, 1995. See Tenn. Code Ann. §§40-30-101 - 124 (repealed 1995). That act imposed a three year statute of limitations on post-conviction petitions. Tenn. Code Ann. §40-30-102 (repealed 1995). The statute of limitations contained therein began running on the date of the final action of the highest state appellate court to which an appeal was taken. Id. Appellant did not appeal either of his convictions and, thus, the statute began running on the date of judgment. Therefore, the statute of limitations on appellant's convictions expired on March 11, 1991 in Knox County and May 11, 1991 in Anderson County. Appellant did not file his post-conviction petitions until August of 1995, which is well outside the applicable three year period. Therefore, the trial courts properly dismissed appellant's petitions.

In contesting this conclusion, appellant relies upon an earlier opinion from a panel of this Court construing the new Post-Conviction Procedure Act, which became effective May 10, 1995. See Arnold Carter v. State, No. 03C01-9509-CC-00270 (Tenn. Crim. App. at Knoxville, July 11, 1996), perm. to appeal pending. That opinion reaches a different result when construing the statute of limitations applicable to certain post-conviction petitions filed between May 10, 1995 and May 10, 1996. In Carter, the final action taken by an appellate court on the petitioner's convictions occurred in 1985 and the statute of limitations began running on that date. Slip op. at 2. The post-conviction petition at issue there was filed in July of 1995. Id. The petition, filed ten (10) years after the petitioner's final appeal, appeared to have been

filed outside the applicable statute of limitations. However, a panel of this Court held that it was not time-barred. Slip op. at 4. In reaching that result, certain language found in an uncodified portion of the 1995 Act was held to be dispositive of the limitations question. Id. That language states: “Notwithstanding any other provision of this act to the contrary, any person having a ground for relief recognized under this act shall have at least one (1) year from the effective date of this act to file a petition or a motion to reopen under this act.” 1995 Tenn. Pub. Act 207, §3. According to the majority of the panel, this language meant that a petitioner whose claims had already expired now had a new one year period within which to file a post-conviction petition. Carter, slip op. at 4. In essence, the holding allowed any petition filed within one year of May 10, 1995 to be timely filed, regardless of the date of conviction.

Judge David Welles filed a strong dissenting opinion stating his belief that the holding was contrary to the legislature’s intent. Although the author of this opinion was a member of the majority in the Carter opinion, upon further reflection of the issues considered therein, the better-reasoned opinion is that of Judge Welles. In construing that controversial provision, we adopt the following language from Judge Welles’ dissenting opinion:

“[T]his language is only applicable to those who were not barred by the statute of limitations at the time this statute went into effect. Thus, if less than three years had already passed at the bill’s enactment, a defendant assuming that he had three years in which to file a petition for post-conviction relief would not be foreclosed from bringing a suit; instead, he would still have the one year from the effective date of the statute.”

Arnold Carter v. State, No. 03C01-9509-CC-00270 (Tenn. Crim. App. at Knoxville, July 11, 1996), perm. to appeal pending. Construing the new act to provide that all post-conviction petitioners had a new one (1) year period within which to file claims is unreasonable and contrary to the legislature’s intent.

We believe Judge Welles’ reasoning more closely interprets the intention of the legislature when it enacted this language. The controversial provision contains the phrase “*any person having a ground for relief recognized under this act . . .*” 1995

Tenn. Pub. Act 207, §3 (emphasis added). In order for persons to have a ground for relief under the Act, we believe they must initially fall within the statutory parameters of Tennessee Code Annotated section 40-30-202. Therefore, a person has a “ground for relief” recognized under the act only if:

(a) he alleges a constitutional violation any time within one (1) year of the date of the final action taken on his conviction. See Tenn. Code Ann. §40-30-202(a) (Supp. 1995); or

(b) he has a claim falling within the purview of Burford v. State, 845 S.W.2d 204 (Tenn. 1992). The legislature provided exception to the statute of limitations in such cases. See Tenn. Code Ann. §40-30-202(b)(1) and (b)(3); or

(c) the claim is based upon new scientific evidence establishing his innocence. Tenn. Code Ann. §40-30-202(b)(2) (Supp. 1995); or

(d) the three-year period had not expired when the new act became effective on May 10, 1995 (the circumstances outlined by Judge Welles in the above-quoted language).

Without the presence of these circumstances, a petitioner does not have a ground for relief recognized by the Act. Since appellant does not fall within any of those provisions, his claim is barred by the statute of limitations.²

To construe the provision otherwise, in effect, would breathe new life into an extinguished claim. Appellant’s case is an apt example. When appellant filed his post-conviction petition under the new Act, the statute of limitations had already expired. All claims for post-conviction relief that he may have raised were extinguished from that point forward. He could no longer pursue a violation of his constitutional rights arising from these convictions because the statute of limitations terminated his remedy for the injury. It logically follows then that appellant no longer had a “ground for relief” that was recognized under the new Act. Prior law had terminated his right to a remedy so he was no longer entitled to any form of relief. To

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Appellant admitted in his brief that none of the circumstances were present to warrant application of any exception to the statute of limitations. See Tenn. Code Ann. §40-30-202(b). Therefore, we have not analyzed the application of these exceptions to appellant’s case.

follow the rationale in Carter and hold that appellant had one year from May 10, 1995 to file a petition for post-conviction relief would revive an extinguished claim. In our opinion, the legislature had no such intent.³

Accordingly, the judgments of the Anderson County and Knox County trial courts dismissing appellant's petitions are affirmed.

William M. Barker, Judge

John H. Peay, Judge

David G. Hayes, Judge

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We note that this decision comports with an opinion recently released by another panel of this Court. See Johnny Butler v. State, No. 02C01-9509-CR-00289 (Tenn. Crim. App. at Jackson, December 2, 1996).