

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1997 SESSION

FILED

March 19, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

GREGORY D. WILLIAMS,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

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C.C.A. NO. 02C01-9603-CR-00104

SHELBY COUNTY

**HON. BERNIE WEINMAN,
JUDGE**

(Post-Conviction)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The petitioner appeals from the trial court's dismissal of his petition for post-conviction relief. In this appeal as of right, the petitioner contends that the trial court erred in dismissing his petition. We disagree and affirm the action of the trial court.

The petitioner argues that the trial court erred when it dismissed his petition because it was not filed within the statute of limitations. In 1989, the petitioner was convicted of first-degree murder and assault with intent to commit first-degree murder. His convictions became final on January 7, 1991, when the Tennessee Supreme Court denied his application to appeal. Then in January 1996, the petitioner filed a pro se petition for post-conviction relief. The petitioner alleged that his convictions were void because the jury had been charged with an allegedly unconstitutional "reasonable doubt" instruction. In February 1996, the court dismissed his petition because it was filed after the three year period of limitations.

The petitioner argues that the 1995 Post-Conviction Procedure Act allows him an additional year within which he may file a petition. The Act provides, in pertinent part, that "notwithstanding any other provision of this part to the contrary, any person having ground for relief recognized under this part shall have at least one (1) year from May 10, 1995, to file a petition or a motion to reopen a petition under this part." Compiler's Notes to T.C.A. § 40-30-201 (1996 Supp.) referring to Acts 1995, ch. 207, § 3. This Court has recently held that this language does not apply to those petitioners who are already barred by the three year statute of limitations that was in effect prior to the new act. See Johnny L. Butler v. State, No. 02C01-9509-CR-00289, Shelby County (Tenn. Crim. App. filed Dec. 2, 1996, at Jackson) and Wallace Butler v. Ricky Bell, Warden, No. 02C01-9510-CC-00297, Fayette County (Tenn. Crim. App. filed Nov. 19,

1996, at Jackson).¹ This petitioner's convictions became final in January 1991, yet he did not file his post-conviction petition until January 1996. He is clearly barred by the three year statute of limitations. We further conclude that the petitioner's complaint about the jury instruction does not fall within the very narrow exceptions to the limitations period. See T.C.A. § 40-30-202(b).

Thus, we affirm the trial court's dismissal of the petition.

JOHN H. PEAY, Judge

CONCUR:

JOE B. JONES, Judge

JOE G. RILEY, Judge

¹We do note that one panel of this Court has held, with one member dissenting, that the new Post-Conviction Procedure Act provides a "one-year window" in which every defendant may file a petition. See Arnold Carter v. State, No. 03C01-9509-CC-00270, Monroe County (Tenn. Crim. App. filed July 11, 1996, at Knoxville), cert. granted, Dec. 2, 1996.