

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL SESSION, 1997

FILED
May 16, 1997
Cecil W. Crowson
Appellate Court Clerk

BETSY JANE
PENDERGRAST,

Appellant,

VS.

STATE OF TENNESSEE,

Appellant.

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C.C.A. NO. 01C01-9007-CC-00289

RUTHERFORD COUNTY

HON. JAMES K. CLAYTON, JR.
JUDGE

(Post-Conviction)

ON APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT OF RUTHERFORD COUNTY

FOR THE APPELLANT:

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OPINION FILED _____

REVERSED AND REMANDED

DAVID H. WELLES, JUDGE

OPINION

The Defendant, Betsy Jane Pendergrast, appeals the trial court's dismissal of her petition for post-conviction relief. The single issue presented for our review is whether the trial court erred in its determination that the petition was barred by the statute of limitations. On appeal, the State concedes that consideration of the petition was not barred by the statute of limitations and thus the State agrees with the Defendant that this case should be remanded to the trial court so that the petition may be considered on its merits. We agree that the judgment of the trial court must be reversed and this case must be remanded.

The Defendant was convicted of second degree murder and was sentenced to twenty-five years in the Department of Correction in October of 1990. This Court affirmed her conviction and sentence, and our supreme court denied her application to appeal on January 25, 1993.¹ The post-conviction relief petition under consideration herein, apparently the Defendant's first petition, was filed on February 1, 1996. The State moved to dismiss the petition based on the statute of limitations. The trial court granted the State's motion to dismiss. It is from the order of the trial court dismissing her petition that the Defendant appeals.

At the time the Defendant's conviction became final, the statute of limitations applicable to post-conviction proceedings was three years. Tenn. Code Ann. § 40-30-102 (repealed 1995). It is clear that the petition in the case

¹See State v. Betsy Jane Pendergrast, C.C.A. No. 01-C01-9110-CC-00310, Rutherford County (Tenn. Crim. App., Nashville, Oct. 8, 1992).

sub judice was filed several days after the expiration of the three-year statute of limitations.

The new Post-Conviction Procedure Act is applicable to this petition and all petitions filed after May 10, 1995.² This Act repealed the three-year statute of limitations and enacted in its place a one-year statute of limitations. On the effective date of this Act, same being May 10, 1995, the repealed three-year statute of limitations had not yet run on the petitioner's right to file a petition for post-conviction relief. The 1995 Act provided, in pertinent part, that "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 a petition under this act." 1995 Tenn. Pub. Acts ch. 207 § 3.

Because it is clear that the three-year statute of limitations had not run on this Defendant at the time the legislature repealed that statute and replaced it with a one-year statute, we believe that the provision quoted above provided this Defendant one year from the effective date of the Act, or until May 10, 1996, to file her petition for post-conviction relief. Therefore, as the State concedes, the petition herein was timely filed on February 1, 1996 and should have been considered by the trial court on the merits.

The judgment of the trial court dismissing this petition is reversed, and this case is remanded to the trial court for further proceedings.

²Tenn. Code Ann. § 40-30-201 et. seq. (Supp. 1996). See 1995 Tenn. Pub. Acts ch. 207, § 3.

DAVID H. WELLES, JUDGE

CONCUR:

GARY R. WADE, JUDGE

J. CURWOOD WITT, JR., JUDGE