

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

FEBRUARY 1997 SESSION

<p>FILED</p> <p>May 14, 1997</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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HOBERT REECE,)
)
 Appellant,)
)
 v.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

No. 03C01-9605-CC-00190
 Cocke County
 Honorable Rex Henry Ogle, Judge
 (Post-Conviction)

For the Appellant:

Hobert Reece, 125773, Pro Se
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 Mountain City, TN 37683-5000

For the Appellee:

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 and
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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
 Judge

OPINION

The petitioner, Hobert Reece, appeals as of right from the Cocke County Circuit Court's summary dismissal of his second petition for post-conviction relief. Pursuant to a negotiated plea agreement, the petitioner pled guilty to aggravated rape on January 14, 1989, and was sentenced to twenty-five years as a Range I, standard offender. The trial court denied the petitioner's first petition for post-conviction relief on August 1, 1991, holding that the defendant received the effective assistance of counsel and entered a knowing and voluntary plea. In his second petition, the petitioner raised these same grounds for relief and alleged that his attorney and the trial court committed various errors during the first post-conviction proceeding. The second petition was filed on October 23, 1995. The trial court held that all the grounds raised in the petition had been previously determined, noting as well that the statute of limitations had run. The petitioner contends that his claims have not been waived or previously determined and that he was entitled to an evidentiary hearing. We affirm the judgment of the trial court.

We agree with the trial court's conclusion that the petition fails to state grounds for relief that have not been previously determined. During the hearing that was held on his first post-conviction petition, the petitioner had the opportunity to be heard on his claims that he received ineffective assistance of counsel and entered an involuntary plea. At the conclusion of that hearing, the trial court concluded that the petitioner received the effective assistance of counsel and that he freely entered a voluntary plea. Thus, the claimed grounds have been previously determined. See T.C.A. § 40-30-206(g).

In so far as the petition challenges the actions of the petitioner's attorney and the trial court during the first post-conviction proceeding, it does not allege grounds for post-conviction relief. Post-conviction relief is available in Tennessee when a

petitioner's conviction or sentence is void or voidable due to the abridgment of a constitutional right. T.C.A. § 40-30-203. There is no constitutional right to the effective assistance of post-conviction counsel. Pennsylvania v. Finley, 481 U.S. 551, 554-55, 107 S. Ct. 1990, 1993 (1987); House v. State, 911 S.W.2d 705, 712 (Tenn. 1995). Moreover, the petitioner could have challenged the trial court's findings and conclusions regarding his first petition by appealing the initial denial of post-conviction relief.

Pursuant to T.C.A. § 40-30-206, the trial court was obligated to review the petition and dismiss it without hearing or appointment of counsel if the allegations in the petition failed to show that any claims for relief have not been previously waived or determined. As previously noted, the exact same claims for relief in the present petition were raised and litigated through an evidentiary hearing in the defendant's first post-conviction case. Under these circumstances, the trial court was obligated to dismiss the petition without further action.

The judgment of the trial court is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Jerry L. Smith, Judge

Thomas T. Woodall, Judge