

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JULY 1997 SESSION

FILED

August 22, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

JAMES EDWARD HUGHES,)
a.k.a. LARRY WAYNE HUGHES)
Appellant)
V.)
STATE OF TENNESSEE,)
Appellee)

NO. 01C01-9605-CC-00188
RUTHERFORD COUNTY
HON. J.S. DANIEL, JUDGE
(Post-Conviction)

FOR THE APPELLANT

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OPINION FILED: _____

AFFIRMED

The Appellant, James Edward Hughes, appeals as of right the Rutherford County Circuit Court's dismissal of his petition for post-conviction relief. On July 10, 1985, the Appellant pled guilty to robbery with the use of a deadly weapon. On December 9, 1993, the Appellant was convicted of possession of a firearm by a convicted felon in the United States District Court for the Middle District of Tennessee. The District Court used the robbery conviction to enhance the Appellant's sentence. The Appellant filed this post-conviction relief petition to overturn the Rutherford County robbery conviction in order to have his sentence in the federal penitentiary reduced. On March 21, 1996, without an evidentiary hearing, the trial court dismissed the petition, ruling that it was barred by the statute of limitations.

Pursuant to the now-repealed Post-Conviction Procedure Act, the statute of limitation applicable to the Appellant's post-conviction claims was three years.¹ Tenn. Code Ann. § 40-30-102 (repealed 1995). That three-year period began running on July 1, 1986, the effective date of the statute. The last day on which the Appellant could have filed such a petition was in July of 1989. See e.g. State v. Mullins, 767 S.W.2d 668, 669 (Tenn. Crim. App. 1988); Smith v. State, 757 S.W.2d 683, 685 (Tenn. Crim. App. 1988); State v. Masucci, 754 S.W.2d 90, 91 (Tenn. Crim. App. 1988); Abston v. State, 749 S.W.2d 487, 488 (Tenn. Crim. App. 1988). The Appellant's petition was filed in March of 1996, more than six years after the statute expired. Consequently, the trial court properly dismissed the Appellant's petition.

Any contention by the Appellant that the new Post-Conviction Procedure Act, effective May 10, 1995, provided him with a one-year window of opportunity within which to file his post-conviction petition is meritless. Similar attempts to circumvent the statute of limitations in this manner have been previously rejected by panels of this

¹Prior to the enactment of the 1986 Post-Conviction Procedure Act, no statute of limitations for post-conviction applications existed.

Court. See Roy Barnett v. State, C.C.A. No. 03C01-9512-CV-00394 (Tenn. Crim. App., Knoxville, Feb. 20, 1997); Stephen Koprowski v. State, C.A.A. No. 03C01-9511-CC-00365 (Tenn. Crim. App., Knoxville, Jan. 28, 1997); Johnny L. Butler v. State, C.C.A. No. 02C01-9509-CR-00289 (Tenn. Crim. App., Jackson, Dec. 2, 1996). But see Arnold Carter v. State, C.C.A. No. 03C01-9509-CC-00270 (Tenn. Crim. App., Knoxville, July 11, 1996).

Accordingly, the trial court's dismissal of the Appellant's petition for post-conviction relief is affirmed.

WILLIAM M. BARKER, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

JERRY L. SMITH, JUDGE