

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MARCH 1998 SESSION

**FILED**

May 20, 1998

**Cecil Crowson, Jr.**  
Appellate Court Clerk

**THOMAS L. WALKER,**

Appellant,

VS.

**STATE OF TENNESSEE,**

Appellee.

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**C.C.A. NO. 03C01-9612-CR-00482**

**KNOX COUNTY**

**HON. RAY L. JENKINS,**  
**JUDGE**

(Post-Conviction)

FOR THE APPELLANT:

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**JOHN H. PEAY,**

Judge

## OPINION

In June 1985, the petitioner pled guilty to several burglary charges in Knox County. He did not seek direct review of his sentence. Six years later, in September 1991, he filed a pro se petition for post-conviction relief, alleging that his guilty pleas to the burglary charges were not voluntarily, intelligently, and knowingly entered. Over the next few years, a series of different attorneys, including the Knox County Public Defender, were appointed to the petitioner's case, but none filed any pleadings except motions to withdraw. Eventually, in November 1994, the trial court dismissed the petition for post-conviction relief without an evidentiary hearing. Two years later, the petitioner filed a motion with this Court seeking delayed appeal of the dismissal of his petition, which we granted. However, upon review of the record, we affirm the trial court's dismissal of his petition for post-conviction relief.

The petitioner pled guilty in 1985, prior to the July 1, 1986, effective date of T.C.A. § 40-30-102 (repealed and replaced by § 40-30-202 in 1995). As such, the petitioner had until July 1, 1989, to file a petition for post-conviction relief. Abston v. State, 749 S.W.2d 487, 488 (Tenn. Crim. App. 1988). In this case, the petitioner filed his petition for post-conviction relief in September 1991, well after the statute of limitations had run. Thus, his petition was barred by the statute of limitations and therefore was properly dismissed.

On appeal, the petitioner urges that the statute of limitations should be tolled in his case because he was denied a reasonable opportunity to present his petition for post-conviction relief. See Burford v. State, 845 S.W.2d 204 (Tenn. 1992). As support for this argument, the petitioner contends that he first sought post-conviction relief in August 1985, but the District Attorney General's office "forced" him to withdraw this petition two years later by improperly threatening to prosecute him as a habitual criminal and seek an enhanced sentence. We reject this argument because none of

these factual allegations find support in the instant record.

The only allegations contained in the September 1991 petition, which is the only petition at issue in this appeal, concern whether the petitioner voluntarily, intelligently, and knowingly entered his guilty pleas in 1985. The petitioner has never alleged on the record in this case any entitlement to post-conviction relief on the basis that the District Attorney General's office "forced" him to withdraw a 1985 petition for post-conviction relief or that the District Attorney General's office otherwise acted improperly. Moreover, nothing in the record suggests that the petitioner should be afforded an exception to the statute of limitations under the standard enunciated in Burford. Even assuming that the District Attorney General "forced" the petitioner to withdraw a prior petition, nothing explains why the petitioner chose to wait several years---after the statute of limitations had already run---to file another petition. See Passarella v. State, 891 S.W.2d 619, 626 (Tenn. Crim. App. 1994)(stating that "Burford cannot be invoked by a petitioner who has simply slept on his right to seek post-conviction relief"). Accordingly, on the basis of the record before us, we find that the petitioner untimely filed his petition for post-conviction relief, and as such, his petition was properly dismissed. The dismissal of the petition is affirmed.

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JOHN H. PEAY, Judge

CONCUR:

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PAUL G. SUMMERS, Judge

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CORNELIA A. CLARK, Special Judge