

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

FILED

R.B. TOBY,

*

Appellant,

* C.C.A.#03C01-9711-CC-00507

August 17, 1998

VS.

* SEVIER COUNTY

STATE OF TENNESSEE,

*

Appellee.

*

Cecil Crowson, Jr.

Appellate Court Clerk

ORDER

_____The petitioner, R.B. Toby, proceeding pro se, appeals as of right from the Sevier County Criminal Court's dismissal of his petition for post-conviction relief. The record reflects that the petitioner pled guilty to two counts of vehicular homicide, one count of vehicular assault, and one count of violating the Habitual Motor Vehicle Statute on January 13, 1994. By plea agreement, he received an aggregate sentence of fifteen (15) years in the Department of Correction. The sentence included two concurrent ten (10) year sentences for each vehicular homicide conviction, a five (5) year consecutive sentence for the vehicular assault conviction, and a concurrent four (4) year sentence for the habitual motor vehicle offender conviction.

The petitioner did not appeal the sentence but filed a petition for post-conviction relief on October 23, 1996. He alleged that the indictments upon which he was convicted were fatally deficient in failing to state the term of the grand jury and in failing to adequately state the facts surrounding the offense. In dismissing the petition without an evidentiary hearing, the trial court concluded that the petition was not timely filed and that the petitioner's claims did not present any exception to the statute of limitations.

After full consideration of the record, the briefs, and the law governing the issues presented, we are of the opinion that the record supports the trial court's actions

and that no precedential value would be derived from the rendering of an opinion. The petition was filed outside the statute of limitations, see T.C.A. § 40-30-202, and the petitioner's claims do not fall under any of the exceptions to the statute of limitations, see T.C.A. § 40-30-202(b). It is , therefore, ORDERED that the judgment of the trial court is affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules. Due to the petitioner's indigence, costs shall be taxed to the state.

Gary R. Wade, Judge

CONCUR:

Joseph M. Tipton, Judge

David H. Welles, Judge