

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 16, 2014

**CALEB J. BELCHER v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Monroe County**  
**No. 490614      Carroll L. Ross, Judge**

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**No. E2014-00649-CCA-R3-PC - Filed September 25, 2014**

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Petitioner, Caleb J. Belcher, pleaded guilty to four counts of rape and one count of aggravated sexual battery, all Class B felonies, and two counts of willful abuse, neglect, or exploitation of an adult, Class E felonies. He received concurrent sentences of ten years for each Class B felony and concurrent two-year sentences for the remaining convictions. He filed the instant petition for post-conviction relief, which was summarily dismissed by the post-conviction court. In this appeal from the dismissal, petitioner seeks DNA testing of physical evidence pursuant to the Post-Conviction DNA Analysis Act of 2001 and raises claims of ineffective assistance of counsel and other constitutional violations. Following our review, we affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROGER A. PAGE, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ROBERT H. MONTGOMERY, JR., JJ., joined.

Caleb J. Belcher, Clifton, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michelle Consiglio-Young, Assistant Attorney General; Robert Steven Bebb, District Attorney General, for the appellee, State of Tennessee.

**OPINION**

I. Procedural History

Based upon the record before us, petitioner entered the aforementioned guilty pleas on June 27, 2011. He did not file a direct appeal from those convictions. An order appended to petitioner's brief indicates that he filed his first petition for post-conviction relief prior to

March 12, 2012, which was the date of the order of dismissal. The petition itself is neither contained in the record nor attached to petitioner's brief. On February 24, 2014, he filed a second petition for post-conviction relief specifically requesting DNA analysis pursuant to the Post-Conviction DNA Analysis Act of 2001 ("the Act") and alleging various instances of ineffective assistance of counsel and other constitutional violations. The post-conviction court entered an order summarily dismissing the petition on March 18, 2014. Petitioner filed a timely notice of appeal from the order of dismissal.

## II. Analysis

Petitioner alleges that the post-conviction court erred by failing to hold an evidentiary hearing on his request for DNA testing and that it erred by failing to properly address tolling of the statute of limitations for filing a petition for relief under due process principles.

### A. Post-Conviction DNA Analysis Act of 2001

Petitioner requested DNA testing of evidence relating to his 2011 convictions. The Post-Conviction DNA Analysis Act of 2001 allows petitioners convicted and sentenced for certain homicide and sexual assault offenses in which biological evidence may have existed to request post-conviction DNA testing. Tenn. Code Ann. § 40-30-303. The Act contains no statutory time limit and extends to petitioners the opportunity to request analysis at "any time," regardless of whether such a request was made at trial:

[A] person convicted of and sentenced for . . . rape . . . may at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.

*Griffin v. State*, 182 S.W.3d 795, 799 (Tenn. 2006) (citing Tenn. Code Ann. § 40-30-303).

While the Act divides cases into two distinct categories in which DNA analysis may be either mandatory or discretionary, both categories contain the same requirement: The evidence must still be in existence and in such a condition that DNA analysis may be conducted. Tenn. Code Ann. §§ 40-30-304, -305. The Post-Conviction DNA Analysis Act of 2001 "does not specifically provide for a hearing as to the qualifying criteria . . . ." *Dennis R. Gilliland v. State*, No. M2007-00455-CCA-R3-PC, 2008 WL 624931, at \*3 (Tenn. Crim. App. March 3, 2008) (quoting *William D. Buford v. State*, No. M2002-02180-CCA-R3-PC, 2003 WL 1937110, at \*3 (Tenn. Crim. App. Apr. 24, 2003)). Thus, "[i]f the [S]tate contests the presence of any qualifying criteria [required by the Act] and it is apparent that

each prerequisite cannot be established, the trial court has the authority to dismiss the petition' in summary fashion.” *Id.* at \*3 (quoting *William D. Buford*, 2003 WL 1937110, at \*6). A petitioner’s failure to establish any one of the qualifying criteria results in dismissal of the action. *Powers v. State*, 343 S.W.3d 36, 48 (Tenn. 2011).

In its order in this case, the post-conviction court noted that petitioner’s first petition for post-conviction relief requested DNA testing and that the State responded, in that case, that “no physical evidence was gathered in the defendant’s original cases and no rape kit [was] done, and therefore, there [was] no evidence on which a DNA analysis could be performed.” In its response to the first petition, the State properly contested the presence of one of the qualifying criteria for relief pursuant to the Act, and it was apparent to the post-conviction court that the prerequisite of existing DNA evidence could not be established. Petitioner has failed to demonstrate otherwise in this case. He neglected to provide an explanation of what evidence he believed to be in existence or what item(s) should be tested for DNA. Petitioner is not entitled to the relief sought under the Act.

#### B. Ineffective Assistance of Counsel and Other Claims

Petitioner included several allegations of ineffective assistance of counsel and other constitutional violations in his 2014 petition for post-conviction relief. He alludes to alleged mental health conditions that, arguably, could excuse his failure to comply with the statute of limitations for filing a petition for relief.

The record reflects that the 2014 petition was filed more than two years after the judgments became final in 2011. A person convicted of a crime must petition for post-conviction relief within one year of the date on which the judgment became final, if no appeal was taken. Tenn. Code Ann. § 40-30-102(a). Time is of the essence when asserting a claim for post-conviction relief, and a petitioner’s compliance with the statute of limitations is an element of the right to file a petition. *See id.* § 40-30-102(b). A petition for post-conviction relief must include facts that demonstrate timely filing or justification for tolling the statute of limitations period. *See State v. Nix*, 40 S.W.3d 459, 464 (Tenn. 2001). A petitioner’s failure to include sufficient factual allegations of either compliance with the statute or circumstances that require the court to toll the statute will result in dismissal. *Id.* However, pursuant to Tennessee Code Annotated section 40-30-102(b)(1)-(3), this court may consider a petition for post-conviction relief filed outside the one-year statute of limitations if the petitioner’s claim (1) is based upon a final ruling of an appellate court establishing a new constitutional right; (2) is based upon new scientific evidence establishing that petitioner is actually innocent; or (3) seeks relief from a sentence that was enhanced because of a prior conviction that was found to be invalid.

In addition to the exceptions above, this court will also consider an untimely petition if due process considerations require tolling of the post-conviction statute of limitations. *See Whitehead v. State*, 402 S.W.3d 615, 622-23 (Tenn. 2013); *Seals v. State*, 23 S.W.3d 272, 278-79 (Tenn. 2000); *Burford v. State*, 845 S.W.2d 204, 210 (Tenn. 1992). “To determine if due process requires the tolling of the statute of limitations, a court must weigh the petitioner’s interest in having an opportunity to present his claims in a meaningful time and manner against the state’s interest in preventing the litigation of stale and fraudulent claims.” *Gerald Wayne Carter v. State*, No. W2008-00652-CCA-R3-PC, 2008 WL 4922710, at \*2 (Tenn. Crim. App. Nov. 13, 2008) (citing *Burford*, 845 S.W.2d at 208). Due process concerns may toll the statute of limitations for post-conviction petitioners who face circumstances beyond their control, such as mental illness and attorney misrepresentations, that preclude them from actively raising their post-conviction claims. *Williams v. State*, 44 S.W.3d 464, 469 (Tenn. 2001).

In support of mental health “deficiencies,” petitioner posits in his brief that a forensic evaluation, which is included in the technical record, showed that he “could be easily induced or coerced into making statements that might not be true.” In a subsequent paragraph, petitioner, without more, alleges that the statute of limitations should be tolled because of his “mental deficiency.” Our supreme court has addressed the level of proof necessary to invoke due process protection from the stringency of the statute of limitations. *See Nix*, 40 S.W.3d at 464. Our court held, “We emphasize that to make a prima facie showing of incompetence requiring tolling of the limitations period, a post-conviction petition must include specific factual allegations that demonstrate the petitioner’s inability to manage his personal affairs or understand his legal rights and liabilities.” *Id.* “Unsupported, conclusory, or general allegations of mental illness will not be sufficient to require tolling and prevent summary dismissal under Tenn. Code Ann. § 40-30-206(b) & (f).” *Id.* “The required prima facie showing may be satisfied by attaching to the petition affidavits, depositions, medical reports, or other credible evidence that contain specific factual allegations showing the petitioner’s incompetence.” *Id.* (citing Tenn. Code Ann. § 40-30-204(e)).

Petitioner attached a copy of a “Confidential Forensic Evaluation” conducted by Dr. Andrew Demick in 2010. However, even this document belies petitioner’s contention that he suffers from a mental deficiency. Dr. Demick noted that petitioner’s overall hygiene and grooming appeared to be “adequate.” He found that petitioner “recognize[d] the importance of his attorney and [knew] that he [would] have to consult with his attorney prior to making a decision in regards to how best to prepare a legal strategy” and that petitioner “clearly appreciate[d] the severity of the current charges.” Petitioner was aware of the various pleas available to him and “easily” explained how a plea agreement operated. Dr. Demick concluded that petitioner “was intellectually capable of appreciating the nature and wrongfulness of the alleged criminal acts” and that it was “also quite apparent that

[petitioner] did not engage in any of the alleged criminal acts due primarily to a mental health defect or disease.” Likewise, “a defense of insanity [could] not be supported.” Nothing in Dr. Demick’s report suggests that petitioner was unable to manage his affairs or understand his legal rights or liabilities. Petitioner is not entitled to a tolling of the statute of limitations in this case.

### **CONCLUSION**

Based upon the record as a whole, the parties’ briefs, and the applicable legal authority, we affirm the judgment of the post-conviction court.

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ROGER A. PAGE, JUDGE