

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs April 11, 2017

FRANKIE JASON COPE v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Henderson County
No. C-16072-2 Donald H. Allen, Judge**

No. W2016-01690-CCA-R3-PC

The pro se Petitioner, Frankie Jason Cope, appeals the summary dismissal of his petition for post-conviction DNA analysis. Following our review, we affirm the summary dismissal of the petition pursuant to Rule 20, Rules of the Court of Criminal Appeals.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

ALAN E. GLENN, J., delivered the opinion of the court, in which TIMOTHY L. EASTER and J. ROSS DYER, JJ., joined.

Frankie Jason Cope, Clifton, Tennessee, pro se.

Herbert H. Slatery III, Attorney General and Reporter; Katherine C. Redding, Assistant Attorney General; James G. (Jerry) Woodall, District Attorney General; and Angela R. Scott, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On December 2, 2008, the Petitioner pled guilty in the Henderson County Circuit Court to two counts of aggravated sexual battery in exchange for concurrent sentences of ten years at 100% in the Department of Correction. As part of his negotiated plea agreement, a charge of rape of a child was dismissed. The Petitioner did not file a direct appeal of the convictions.

On May 16, 2016, the Petitioner filed a petition for post-conviction DNA analysis pursuant to the Post-Conviction DNA Analysis Act, arguing that it was “more probable than not that exculpatory results” would have been obtained that would have resulted in

his not being prosecuted for or convicted of the crimes. In his statement of facts in support of the petition, he alleged that the minor victim's mother had encouraged her daughter "to lie and say that [the] Petitioner was the one that was sexually involved with her that led to her acting out sexually" in retaliation for the Petitioner's role in having the victim's mother and her partner investigated by the Department of Children's Services. The Petitioner asserted that he was never afforded the opportunity pretrial to present the facts relating to the mother's motive to retaliate against him and that he never should have been convicted without physical evidence of a crime.

On July 18, 2016, the post-conviction court entered an order of summary dismissal on the basis that the petition was barred by the one-year statute of limitations for post-conviction petitions and there was "never any 'biological evidence' in existence or in the possession or control of the prosecution or any law enforcement personnel." The court noted that the prosecution was based on the identification by the five-year-old victim of the Petitioner as "the person who had sexually touched her vagina 'more than once' with his hand." The court further noted that the Petitioner had freely, voluntarily, knowingly, and intelligently entered his guilty pleas.

On July 29, 2016, the Petitioner filed a "Motion to Alter and Amend Judgment," in which he argued that the post-conviction court erroneously applied the one-year statute of limitations applicable to a petition for post-conviction relief to his petition for post-conviction DNA analysis. The Petitioner acknowledged that there was no biological evidence in his case but argued that "the purpose of the DNA Analysis Act is to confirm with biological evidence that a crime had occurred rather than being based solely on verbal allegations." The Petitioner asserted that, without physical evidence of his crime, he "should have received a more favorable sentence and/or not have been convicted at all."

On July 29, 2016, the post-conviction court entered an order denying the motion to alter and/or amend judgment on the basis that it was without merit. Thereafter, the Petitioner filed a timely notice of appeal to this court challenging the denial of his petition for post-conviction DNA analysis.

The Petitioner is mistaken in his assertion that the purpose of the Post-Conviction DNA Analysis Act is to prevent convictions based solely on a victim's testimony. The purpose of the post-conviction DNA Analysis Act is twofold: to exonerate the wrongfully convicted and to identify the true perpetrators of their crimes. See Powers v. State, 343 S.W.3d 36, 51 (Tenn. 2011). The Act provides that a person convicted of and sentenced for the commission of one of a number of enumerated crimes 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.” Tenn. Code Ann. § 40-30-303.

The Petitioner himself acknowledges that there was never any biological evidence in his case. Accordingly, we affirm the judgment of the post-conviction court summarily dismissing the petition for post-conviction DNA analysis.

When an opinion would have no precedential value, the Court of Criminal Appeals may affirm the judgment or action of the trial court by memorandum opinion when the judgment is rendered or the action taken in a proceeding without a jury and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the findings of the trial judge. See Tenn. Ct. Crim. App. R. 20. We conclude that this case satisfies the criteria of Rule 20. The judgment of the post-conviction court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

ALAN E. GLENN, JUDGE